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DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE ASSESSMENT OF INDONESIA

FINAL REPORT

MAY 2013

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Team:

- Yemile Mizrahi, Ph.D., Assessment Team Leader and Principal Author, Tetra Tech ARD
- R. William Liddle, Ph.D., Senior Governance Expert, Consultant to Tetra Tech ARD
- Sugianto Tandra, Local Governance Expert, Consultant to Tetra Tech
- April Hahn, USAID/Washington
- Christina Li, State Department's Bureau of Democracy, Human Rights and Labor
- Miranda Jolicoeur, USAID/Indonesia
- Ining Nurani, USAID/Indonesia
- Nurhayati, Logistics Coordinator, Consultant to Tetra Tech ARD

This report was prepared by:

Tetra Tech ARD

159 Bank Street, Suite 300

Burlington, Vermont 05401 USA

Telephone: (802) 658-3890

Fax: (802) 658-4247

Tetra Tech ARD Contact:

Kathy Stermer, Analytical Services III IQC Senior Project Manager

Tel: (802) 658-3890 ext. 2272

Email: kathy.stermer@tetrattech.com

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DISCLAIMER

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ACRONYMS AND ABBREVIATIONS

AGO	Attorney General's Office
APEC	Asia-Pacific Economic Cooperation
APINDO	Employers' Association of Indonesia
ASEAN	Association of Southeast Asian Nations
AusAID	Australian Agency for International Development
BAPPENAS	National Development Planning Agency
BPK	State Audit Agency
BPS	Central Bureau of Statistics
CBO	Community-Based Organization
CIDA	Canadian International Development Agency
CIVETS	Colombia, Indonesia, Vietnam, Egypt, Turkey and South Africa
COSO	Committee of Sponsoring Organizations of the Treadway Commission
CSO	Civil Society Organization
DAC	Development Assistance Committee
DAK	Special Purpose Grants
DPD	Regional Representative Council
DPR	House of Representatives
DRG	Democracy, Human Rights and Governance
DRL	State Department's Bureau of Democracy, Human Rights and Labor
EU	European Union
FPI	Islamic Defenders Front
GAM	Acehnese Freedom Movement
GDP	Gross Domestic Product
GIZ	German International Cooperation Agency
GOI	Government of Indonesia
HDI	Human Development Index
ICW	Indonesian Corruption Watch
IKAHI	Indonesian Judges' Association
IR	Intermediate Result
JI	Islamic Community
JPIP	<i>Jawa Pos</i> Institute of Pro-Otonomi
KADIN	National Chamber of Commerce and Industry
KPK	Corruption Eradication Commission
KPU	National Election Commission
LGBT	Lesbian, Gay, Bisexual and Transgender
LSI	Indonesian Survey Institute
M&E	Monitoring and Evaluation

MOHA	Ministry of Home Affairs
MP	Member of Parliament
MPR	People's Consultative Assembly
NGO	Non-governmental Organization
OECD	Organization for Economic Cooperation and Development
OPM	Papuan Freedom Movement
PAN	National Mandate Party
PDIP	Indonesian Democracy Party of Struggle (formerly PDI)
PKB	People's Awakening Party
PKS	Prosperous Justice Party
PMP	Performance Monitoring Plan
PPP	United Development Party
UKP4	Presidential Working Unit for Supervision and Management of Development
UN	United Nations
UNDP	UN Development Program
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

Fourteen years after President Suharto's 32-year autocratic rule abruptly came to an end in May 1998, Indonesia has emerged as a stable and peaceful democracy and a regional economic powerhouse. Indonesia's economy is today ranked as the 16th largest in the world and projected to be in the top 7 by 2030. The country is a strategic ally of the United States: it has extensive forest and natural resources that are critical to achieving global environmental and climate mitigation objectives; it also controls a large percentage of world trade transits, including the strategically important sea lanes that link the Middle East with East Asia. At the regional level, Indonesia is considered the geopolitical center of the Association of Southeast Asian Nations (ASEAN), a critical actor in the political and economic dynamics of the larger Asia-Pacific region.

Moreover, Indonesia is the third largest democracy, after India and the United States, and the world's most populous Muslim nation, with a population of 240 million, 85 percent of which is Muslim. As the overwhelming majority of Muslim citizens subscribe to a moderate form of the religion, Indonesia has the potential to act as a counterbalance to more extreme expressions of Islam. Today, Indonesia is recognized as a shining example to the world that Islam, democracy, and modernity can actually be compatible and exist in harmony. Indeed, Indonesia is a model for other Muslim countries that have emerged from years of authoritarian rule.

Despite the political and economic progress achieved thus far, Indonesia faces many challenges that if not adequately confronted may undermine the deepening of democracy and the progress achieved. Even though the country has maintained relatively high levels of economic growth averaging 5-6 percent per year, Indonesian social indicators lag behind other middle-income countries. The country is also becoming less competitive than China, Thailand, Vietnam, India, Malaysia, and the Philippines. Both the World Bank and the World Economic Forum conclude that low investments in health and education, crumbling infrastructure, and endemic corruption have increased the risks of doing business in the country and obstructed the country's economic potential. Importantly, during the past five years the income gap has increased, with a Gini index now standing at 0.41 (compared to 0.33 in 2005).¹

Indonesia, by no means a poor country, has more than 30 million people who continue to live in poverty. The quality of public services remains low and certainly inadequate for a country that strives to become an emerging world power. These problems are not only economic in nature, they are also governance problems. They are related to how policy decisions are made; how public resources are allocated to different social needs—or lost due to waste and/or corruption; and to the technical capacity of public officials to deliver services and meet the demands of their citizens.

In the end, democracies cannot be supported on a normative basis alone; they also need to deliver public goods. Democratic governments need to respond adequately to citizens' needs and demands, they need to protect citizens' rights, generate legal certainty and promote economic prosperity.² Although strong consensus exists on the legitimacy of democratic rule, this consensus can begin to erode if the government is unable and/or unwilling to improve the quality of public services, increase citizens' economic and social well-being, generate private investment, and increase the opportunities to improve and prosper in the country.

¹ One of the most important factors limiting adequate investments in education and health services is the fuel subsidy, the biggest expenditure in the national budget. Expenditures in education are insufficient to address the country's needs and to comply with Indonesian constitutional and legal mandates. For example, the Law on National Education (No.20/2003) and Constitutional Amendment III emphasize that all Indonesian citizens have the right to education, government has an obligation to finance basic education without charging fees, and government is mandated to allocate 20 percent of its expenditure on education.

² Larry Diamond and Leonardo Morlino, "The Quality of Democracy: An Overview, *Journal of Democracy* 15:4, October 2004.

Rising Islamic fundamentalism is only one warning sign of the challenges ahead. While the causes are complex, these movements often generate sympathy among those who have little to lose: the poor and unemployed, particularly if they are young.³

The deepening of democracy in Indonesia will depend largely on the political will of top government officials to recognize the challenges they face and introduce substantive reforms even when that implies alienating important stakeholders with a vested interest in the status quo. As multiple examples of successful reform around the world demonstrate, political will for change depends in part on the existence of strong leadership from the top. But when political will is weak and/or lacking, it can be generated by strong, consistent, and well-organized pressure from below.⁴

As demonstrated below, Indonesia has potential on both fronts: civil society organizations (CSOs) and non-governmental organizations (NGOs) are vibrant and have proliferated during the past decade. In many cases, civil society has played a critical role in lobbying successfully in favor of important reforms, such as passing electoral legislation or allowing the Corruption Eradication Commission (KPK) to proceed with its investigations of cases of corruption involving high-profile government officials. Yet CSOs and NGOs continue to suffer from internally weak organizational structures, donor dependency, and deficient technical capacities. Most are adversarial in their relationship with government authorities, a legacy they have inherited from years of resistance to authoritarian rule. Not surprisingly, government officials distrust these organizations, and for the most part, are still reluctant to work with them or welcome their participation.

NGOs and CSOs could maximize their potential and become more effective as agents of change at the national and local levels if they strengthen their internal organizational structures and improve their advocacy and communication capacities—especially their ability to adopt more proactive, constructive, substantive, and participatory strategies to engage public officials on a more sustainable basis. Similarly, champions of reform exist at all levels of government, but are not well organized and often lack voice. USAID can leverage its resources most effectively if it supports champions of reform at the national and local levels and assists NGOs to strengthen their internal organizational structures and advocacy capacities, thereby contributing to the further development of Indonesia's civil society.

INDONESIA'S MAIN GOVERNANCE PROBLEMS

Poor service delivery along with a weak and deeply corrupt justice system constitute the most important governance challenges in Indonesia today. That is, the main governance challenges are in the arena of government effectiveness and rule of law.

Many of the problems of corruption, a compromised judiciary, and weak law enforcement were inherited from the Suharto regime. Indeed, the transition to democracy, for all its transformative power, did not

³ It is important to note that vulnerability to extremism is not caused by low levels of development. The recent USAID report, *Violent Extremism and Insurgency in Indonesia: A Risk Assessment* notes that while support can be engineered from poor and marginalized populations as a function of frustrated expectations, the impetus for and organizational skills to carry out mobilization nearly always comes from ranks of more privileged classes. Development is relevant as a part of a larger grievance-driven narrative on the part of extremists that highlights factors such as corruption, lack of service delivery, perceptions of political neglect—and especially—a set of ideological grievances related to Islamization. Development inputs can respond to counter-extremism objectives but must be carefully programmed to address actual sources of grievance. (USAID, *Violent Extremism and Insurgency in Indonesia: A Risk Assessment*. Washington, DC: USAID and prepared by David Timberman from Management Systems International. 2013).

⁴ The power of organized social movements as catalysts of change is well documented in scholarly research. Some examples include the importance of the women's suffrage movement in the United States leading to the women's right to vote (Leonor Flexner and Ellen Fitzpatrick, *Century of Struggle: The Women's Right Movement in the United States*. Harvard College, 1959); the enactment of stronger environmental regulations in the United States and many European countries as a result of the environmental movement (Alain Touraine, *Anti-Nuclear Protest: The opposition to nuclear energy in France*. Cambridge, Cambridge University Press, 1983); the power of social movements in Latin America during the 1960s and 1970s in helping to pave the way for political change in the 1990s (Susan Eckstein, ed. *Power and Popular Protest. Latin American Social Movements*. Berkeley and Los Angeles, University of California Press, 2001); the power of urban social movements in bringing about broader political change in their cities and successfully overcoming the resistance of dominant interests that resist change (Manuel Castells, *The City and the Grassroots*. Berkeley and Los Angeles, University of California Press, 1983); and the importance of the Solidarity labor movement in Poland in bringing about political change (Alain Touraine, *Solidarity: The analysis of a social movement: Poland 1980-1981*. Cambridge, Cambridge University Press, 1983).

effectively dismantle the structure of opportunities for engaging in corrupt behavior and maintaining what Indonesians call the “bureaucratic mind set.” In fact, many people interviewed for this assessment believe the incentives for corruption have actually increased, in large part as a result of a rapid decentralization process that delegated too much power to local governments coupled with an overall weakness of the systems of control and government accountability. Moreover, despite taking office with a strong pledge of anti-corruption reform, the current administration of President Susilo Bambang Yudhoyono has too often capitulated to powerful vested interests that benefit from the obstruction of substantive governance reforms. During the president’s second term, oversight agencies—election management bodies, the national audit agency, the judicial commission, the ombudsman, the police commission, etc.—have weakened.

This assessment starts from the premise that institutions and rules—both formal and informal—shape behavior by structuring the set of opportunities and constraints stakeholders confront in different settings. Public officials are not necessarily “born” with good ethical standards and/or commitment to public service; they learn these qualities as they confront both rewards and negative consequences for unethical and/or inefficient behavior. Corrupt and unproductive officials are typically neither ignorant nor unaware that their actions are wrong and/or illicit. They continue to underperform and engage in corrupt practices primarily because the opportunities to profit from this pattern of behavior surpass the risks of being caught and sanctioned. In a system where corruption is systemic and endemic, and where few rewards exist for productivity, it is actually considered “foolish” or irrational to behave with integrity and greater diligence.

To provide USAID with meaningful and realistic strategic and programmatic recommendations, the structure of opportunities and constraints for introducing substantive governance reforms in Indonesia were analyzed and potential champions of reform at different levels of government were identified. Following a political economic analytical perspective, this study examined different actors and institutions that play an important political and economic role in the country, assessing both their interests and the resources they wield to express and defend those interests.

Introducing governance reform, like any other reform, implies creating winners and losers; those who stand to win need to have sufficient power and authority to push the reform forward and those who stand to lose have to be persuaded to support the reform. If this is not possible, it is important at least to mitigate the loser’s power and capacity to obstruct the reform process.

In Indonesia, the “constituency of corruption” has not yet faced sufficient incentives to modify its behavior. The latter includes top public officials who benefit from opacity and unclear business deals, particularly those responsible for issuing regulations, granting permits, and procuring goods and services. Public surveys indicate that most citizens believe corrupt officials are more predominant among personnel at the national police, Attorney General’s Office, Supreme Court, and of course, parliament. Additionally, the constituency of corruption includes business people and political party leaders (often indistinguishable from one another) who are ready and willing (and sometimes forced) to strike deals with corrupt government officials. Finally, the constituency includes citizens who are disempowered and/or discouraged to confront corrupt public officials who refuse to offer public services if a bribe or other inducement is not paid. Although obviously the public, especially the poor, stand to lose the most from the system of corruption and government incompetence, so far they have not had sufficient capacity to exert greater and more sustained pressure to demand better services and greater integrity from government officials.

The country’s Corruption Eradication Commission has without a doubt been successful in combatting corruption. It has removed some of “the rotten apples from the barrel.” Yet, by itself, the mostly punitive-based strategy is not effective in altering the structure of incentives that generate or motivate corruption in the first place. The latter calls for a more structured and comprehensive strategy.

Indonesia has good opportunities for moving forward and promoting significant change, particularly at the local level, even when the constituency of corruption remains strong and many legacies of the past continue to benefit a few powerful interest groups. First, in virtually every government agency at the central and local levels, champions of reform exist. While at the central level these champions are not typically empowered and

can easily become trapped in the complex bureaucratic web that resists the deepening of democratic governance reforms, at the local level, these champions have broader room to maneuver and can therefore play a more critical role in pushing forward the reform process. National-level leaders should be engaged, and if possible, supported through strategic partnerships and targeted technical assistance to promote greater buy-in and minimize resistance to change. Second, the introduction of direct elections for mayors and district heads has generated powerful incentives for these officials to perform better and become more accountable to the electorate. Finally, NGOs have proliferated around the country and are playing an increasingly vital role in demanding good governance. Not surprisingly, the local level has become the “laboratory of democracy” in Indonesia, where a combination of highly motivated leaders and a strong and well-articulated civil society has been shown to make a difference.

STRATEGIC RECOMMENDATIONS

In recent years, U.S. policy toward Indonesia has focused on cementing ties with a geopolitically important state that can play an active role in regional diplomacy and encourage Indonesia to combat terrorism and effectively counter the rise of violent Islamist extremism. The United States has sought to promote democracy, the rule of law, and human rights, and to further American trade and investment interests. Human rights concerns about the armed forces—particularly issues in Papua—have been an unresolved tension in the bilateral relationship. President Obama’s visit in November 2010 served to broaden the relationship. One key outcome included the Comprehensive Partnership Agreement. The partnership has five priority areas, including Democracy and Civil Society.

Although USAID is not the largest donor in the country, it is in a unique position to leverage its resources and achieve maximum results. As was clear in most of our interviews, Indonesians admire the United States, even when they are highly nationalistic and proud of their country. They view the United States’ size, its highly decentralized governance structure, its active and robust civil society and its economic dynamism—even today, when the U.S. economy is still struggling to deal with the aftereffects of a severe financial crisis—as relevant to Indonesia’s realities.

Moreover, Indonesia is not a poor country, even when an estimated 30 million people remain poor or live in conditions of extreme poverty. Donors play a supporting role, but Indonesia is not donor dependent. Almost all central government officials interviewed for this assessment acknowledged that Indonesia does not need U.S. resources. Indeed, when compared to Indonesia’s national budget, USAID’s total investments in the country represent “a drop in the bucket.” Yet, if they do not need U.S. resources, government officials are eager to be exposed to the good ideas, best practices, and effective solutions to complex problems that have been successfully implemented in such a large, rich, diverse, and decentralized country as the United States. Further, they view USAID’s experience and strategic approach to development challenges as highly relevant to Indonesia.

For these reasons, **USAID should refrain from investing in complex projects at the national level.** Yet, engagement with national-level government authorities at the executive, legislative, and judicial sector levels is critical to maintain the U.S. partnership with the Indonesian government and to ensure its collaboration—and hopefully buy-in—in the implementation of USAID’s projects and programs. To that end, strategic partnerships with key national institutions and reform champions are encouraged through a combination of peer-to-peer policy dialogues, study tours, exchanges, and targeted technical assistance.⁵ National-level government officials in Indonesia welcome being treated as partners rather than donor recipients. They do not believe they need U.S. resources; they want good ideas.

The proposed **development hypothesis** is that:

⁵ Such assistance may well be most efficiently provided through one or more USAID projects but the design of these should focus inputs on the type of strategic partnerships described here.

- *If* Indonesian government can better promote economic growth and deliver adequate public services to its citizens, and
- *If* there is strengthened demand for greater justice sector performance and accountability, and
- *If* there is increased effectiveness of electoral authorities to secure clean and fair elections,
- *Then* the quality of governance in Indonesia will be strengthened.

The development hypothesis is premised on the assumption that in Indonesia, as in most democracies, civil society's demand is a critical driver of change. To the extent that civil society is well organized and articulated, it can generate sufficient pressure from below to mobilize political will for reform. Yet, political will is not enough. Government officials willing to introduce substantive reforms also require stronger technical capacity to plan strategically, manage personnel, administer public resources, monitor and evaluate government performance, learn from best practices, and comply with regulations. To the extent that public officials become more competent and motivated, they will be more ready to confront the expected challenges that await any effort to defy powerful vested interests with a stake in the status quo and to overcome the many legacies Indonesia has inherited from its past—such as corruption, lack of accountability, bureaucratic inertia, and weak commitment to service delivery.

Poor service delivery (weak government effectiveness) and an inefficient and deeply corrupt justice system (weak rule of law) are the most important governance challenges in the country. Therefore, **USAID's overall Democracy, Human Rights, and Governance (DRG) Objective should be to strengthen the quality of governance in Indonesia** by increasing the effectiveness of government institutions to respond to citizens' needs and demands, and by strengthening the capacity of CSOs and NGOs to demand greater integrity and accountability of government.

More specifically, USAID should focus and concentrate its programs on **improving government effectiveness at the local level**, where public services are delivered, and on **strengthening the demand for greater judicial performance and accountability**. While weak rule of law is a major governance problem, strengthening the rule of law in Indonesia is a long-term objective and a result too ambitious and far beyond USAID's manageable interests. Building stronger demand for greater judicial performance and legal accountability, on the other hand, is a more realistic and manageable result—and as argued in this report—a critical catalyst for change. Modest rule of law interventions to support the performance of legal professionals will have greater chances for impact as demand for access to justice rises.

In the next few years, USAID plans to continue its electoral program, supporting both electoral authorities and CSOs to improve electoral administration and secure clean and fair elections in the future, which is particularly important in the upcoming presidential elections of 2014. These conclusions are the result of an electoral assessment conducted independently of this assessment, and are included in this report's strategic recommendations. A graphic representation of these objectives and results is presented in Annex 4.

At the local level, USAID should support projects aimed at increasing local government's capacities to provide adequate public services and effectiveness in responding to citizens' needs. Public services are defined broadly and may include health, education, land titling, environmental protection, a business enabling environment, emergency preparedness and response, and importantly, access to justice, among others. If opportunities exist, assistance can also be provided to mitigate corrupt practices in key government offices by reducing the incentives that drive corruption in the first place. Finally, projects should also be directed to enhance local CSOs' and NGOs' capacities to advocate for and demand better and more accountable government services.

At the national level, USAID should continue to provide support to targeted CSOs, NGOs, and community-based organizations (CBOs), particularly those that have the capacity to build strong coalitions, provide technical assistance to regional or local organizations, and advocate for the introduction and implementation of sound governance reforms. As noted before, USAID should also engage national leaders, through strategic

partnerships, peer-to-peer policy dialogues, exchanges, and targeted technical assistance. In the justice sector, in particular, these partnerships are essential because the justice system is centralized.

As we argue in this assessment, direct elections of mayors and district heads have increased the opportunities for reform at the local level, and thus USAID has a better chance of achieving results in the short to medium term (five to 10 years). Moreover, it is at the local level where both civil society and government authorities confront the most serious weaknesses and therefore where donor support is most needed.

USAID should mainstream governance approaches across sectors, ensuring that education, health, environment, and economic growth programs include good governance in their results frameworks. In designing anti-corruption interventions, USAID should identify the structure of incentives that drive corrupt practices in specific sectors, and support program interventions aimed **at increasing the risks and reducing the opportunities for engaging in corrupt behavior**. To ensure that anti-corruption interventions are effectively mainstreamed throughout USAID's programs, it is critical to identify realistic and manageable results and to craft appropriate indicators in USAID's Performance Management Plans (PMPs). The *Kinerja* project appears to be a good example of how to mainstream governance approaches and ensure collaboration across sectors. Moreover, gender, religious tolerance, and anti-corruption activities should also be mainstreamed across projects, ensuring that projects have special consideration for gender equality, transparency and accountability, and freedom of religion and expression.

I.0 INTRODUCTION

The purpose of this report is to summarize the findings of a Democracy, Human Rights, and Governance (DRG) Assessment carried out in Indonesia from October 1-19, 2012. The main objectives of the assessment are to identify the key problems of democracy, human rights, and governance in the country; analyze the structure of opportunities and constraints different actors and institutions face in advancing democratic reform; and provide a set of programmatic recommendations for the United States Agency for International Development's Indonesia Mission (USAID/Indonesia) as the Agency prepares its next five-year strategy. Recommendations are based on a realistic evaluation of the most important opportunities for reform in the country and an assessment of the types of interventions that are within USAID's manageable interests and have the potential for achieving the greatest impact. That will increase the effectiveness and sustainability of DRG programs in Indonesia.

This DRG assessment has been based on USAID's latest DRG Assessment Framework.⁶ The assessment methodology proceeds through four steps. The first identifies the key problems of democracy, human rights, and governance in the country; the second conducts a political economy analysis of the actors and institutions that are likely to support and/or obstruct the deepening of democratic reforms; the third considers the U.S. Government's and USAID's interests and resources. The final step then offers strategic and programmatic recommendations given the problems, actors, and institutional constraints identified.

This report is based on more than 100 personal and focus group interviews conducted during the field work in Indonesia as well as an extensive review of documents, academic papers, opinion surveys, and news reports. For a summary of people interviewed, please see Annex 1.

The assessment team was led by Yemile Mizrahi, Ph.D. from Tetra Tech ARD. R. William Liddle, Ph.D. was the Senior Governance Expert, and Sugianto Tandra the Local Governance Expert. Additionally, April Hahn from USAID/Washington; Christina Li from the State Department's Bureau of Democracy, Human Rights and Labor (DRL); and Miranda Jolicoeur and Ining Nurani from USAID/Indonesia also participated in this assessment. Nurhayati assisted the team as Logistics Coordinator.

In addition to Jakarta, the assessment team conducted field work in Banda Aceh, Aceh; Palangkaraya, Central Kalimantan; Surabaya and Probolinggo, East Java; Makassar, South Sulawesi; and Kupang, East Nusa Tenggara.

The team wishes to thank the DRG office in USAID/Indonesia for facilitating the meetings with the Government of Indonesia's (GOI's) officials, providing valuable information and assisting the team in interviewing USAID and Embassy officials.

⁶ USAID, *Conducting a Democracy, Human Rights, and Governance (DRG) Assessment: A Framework for Strategy Development*. (Washington, DC, 2011).

2.0 STEP ONE: DEFINING THE DRG PROBLEM

2.1 CONTEXTUAL FACTORS

Fourteen years after President Suharto's 32-year autocratic rule abruptly came to an end in May 1998, Indonesia has emerged as a strong world power—ranked as the 16th largest economy in the world—and a case study of a successful and peaceful transition to democracy. Indonesia is the largest country in Southeast Asia and the third largest democracy in the world, after India and the United States. With a population of 240 million and an overwhelming Muslim majority of more than 85 percent, the country is also the world's most populous Muslim nation. Although many challenges remain, today Indonesia is recognized as a shining example to the world that Islam, democracy, and modernity can actually become compatible and live in harmony. Indeed, the Indonesian experience can become a model for other Muslim countries that have emerged from years of authoritarian rule.

The turmoil surrounding the collapse of the Suharto regime made many observers fear that the country would turn down a perilous road of national disintegration. Yet, the Indonesian government managed to pull itself out of the crisis, preserve national integrity and political stability, and significantly sustain relatively high levels of economic growth. Compared to its Southeast Asian neighbors, Indonesia is an example of successful and stable transition to democracy.

According to the World Bank, Indonesia today is home to over 130 million people who are willing and able to spend between U.S. \$2 and \$20 per day.⁷ These consumers are the economy's most important drivers, whose consumption in 2011 accounted for 55 percent of the country's gross domestic product (by comparison, China's consumer spending was only 35 percent).

With economic prosperity, members of the Indonesian middle class are emerging as a political class; they are becoming more interested in the social and political affairs taking place in their country and adopting a more critical position toward their government. Freedom of the press and the expansion of social media networks have played a significant role in this development. Indonesia is now the fourth largest user of Facebook in the world and Jakarta is the world's most active Twitter city. Given that most users of social media networks are middle class citizens, it is not surprising that their voices are often aired through these channels.

However, despite the political and economic progress achieved thus far, Indonesian social indicators are lagging behind other middle-income countries,⁸ and the country is becoming less competitive than China, Thailand, Vietnam, India, Malaysia and the Philippines. Both the World Bank and the World Economic Forum conclude that low investments in health and education, crumbling infrastructure, and endemic corruption have increased the risks of doing business in the country and obstructed Indonesia's economic

⁷ World Bank, Indonesian Economic Quarterly, "2008 Again?," pp. 38-41. (March 2011) http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/03/18/000333037_20110318015637/Rendered/PDF/601520revised0101EQ1Mar20111english.pdf

⁸ Anthony Saich et al. "From Reformasi to Institutional Transformation: A Strategic Assessment of Indonesia's Prospects for Growth, Equity, and Democratic Governance," (Ash Center for Governance and Innovation, Kennedy School of Government, Harvard University, Cambridge, MA, April 24, 2010) pp.v-vi. <http://unpan1.un.org/intradoc/groups/public/documents/UN-DPADM/UNPAN042322.pdf>.

potential.⁹ Importantly, during the past five years, the income gap has increased, with a Gini index now standing at 0.41 (compared to 0.33 in 2005).¹⁰

Indonesia is by no means a poor country, yet more than 30 million people continue to live in poverty and the quality of public services remains low and certainly inadequate for a country that strives to become an emerging world power. These problems, as shown in this assessment, are not only economic in nature—they are governance problems. Confronting these challenges will involve not only the design of good and sound public policies, but significantly, the government's political willingness to implement them, which entails confronting powerful vested interests that have a stake in the status quo and are likely to obstruct them.

As multiple examples of successful reform around the world demonstrate, in democratic countries, political will for change often depends on the existence of a well-organized and articulated demand for change from below.¹¹ When pressure from below is coupled with strong leadership at the top, significant change becomes possible. Political leaders become more willing to confront powerful interests and introduce substantive reforms when the risks of not addressing social demands become far too great, either in the form of intensification of social conflict or potential loss of power. Obviously, some governments resort to force and repression when confronted with strong social movements, but when they do that consistently, they lose legitimacy and undermine the most central elements of democracy.

As we discuss in the next sub-sections, Indonesia has potential on both fronts: civil society organizations (CSOs) and particularly, non-governmental organizations (NGOs) are vibrant and have proliferated during the past decade, and champions of reform exist at all levels of government. USAID can leverage its resources most effectively if it supports champions of reform at the top and assists NGOs (including community-based organizations [CBOs]) to strengthen their technical capacities and internal organizational structure so that they become more sustainable and more effective in exerting pressure from below.

2.2 FIVE KEY ELEMENTS OF DEMOCRACY, HUMAN RIGHTS AND GOVERNANCE

2.2.1 CONSENSUS

Indonesia is a young democracy, but strong consensus exists on the legitimacy of democratic rules and procedures. Public opinion surveys reveal that more than 77 percent of citizens believe democracy is the best form of government.¹² Elections have been institutionalized as a mechanism to transfer power, and

⁹ World Bank, 2011; and World Economic Forum, "The Indonesia Competitiveness Report," (2011) <http://www.weforum.org/reports/indonesia-competitiveness-report-2011>.

¹⁰ Official information from the Indonesian Central Bureau of Statistics (BPS).

¹¹ The power of organized social movements as catalysts of change is well documented in scholarly research. Some examples include the importance of the women's suffrage movement in the United States leading to women's right to vote (Leonor Flexner and Ellen Fitzpatrick, *Century of Struggle. The Women's Right Movement in the United States*. Harvard College, 1959); the enactment of stronger environmental regulations in the United States and many European countries as a result of the environmental movement (Alain Touraine, *Anti-Nuclear Protest: The opposition to nuclear energy in France*. Cambridge, Cambridge University Press, 1983); the power of social movements in Latin America during the 1960s and 1970s in helping to pave the way for political change in the 1990s (Susan Eckstein, ed. *Power and Popular Protest. Latin American Social Movements*. Berkeley and Los Angeles, University of California Press, 2001); the power of urban social movements in bringing about broader political change in their cities and successfully overcoming the resistance of dominant interests that resist change (Manuel Castells, *The City and the Grassroots*. Berkeley and Los Angeles, University of California Press, 1983); and the importance of the Solidarity labor movement in Poland to bring about political change (Alain Touraine, *Solidarity: The analysis of a social movement: Poland 1980-1981*. Cambridge, Cambridge University Press, 1983).

¹² The Indonesian Survey Institute (LSI) has conducted yearly surveys asking people whether they believe democracy is the best form of government. In 2011, the last available survey, 77.3 percent of people interviewed agreed with the statement that democracy is the best form of government. <http://www.lsi.or.id/riset/403/Rilis%20LSI%2029%20Mei%202011>.

Indonesians vote in large numbers.¹³ Even when many people interviewed for this assessment acknowledged—with a certain degree of nostalgia—that the business environment was more favorable under Suharto and that the national bureaucracy was technically more competent, there was no support for a return to authoritarian rule. The formal apparatus of Suharto’s New Order has been dismantled and democracy has become institutionalized. Indeed, as a recent report by the Ash Center at the Harvard Kennedy School recognizes, “Indonesians now enjoy one of the most open and democratic political systems in the region.”¹⁴

In a country ruled for more than 30 years by a heavily centralized and repressive dictatorship, this political change is indeed remarkable. As Christian von Luebke argues, today Indonesia outshines its Southeast Asian neighbors such as Thailand, Malaysia and the Philippines for maintaining democratic rule, political stability and high rates of economic growth.¹⁵ Indonesia is also remarkable for its speedy recovery after the financial collapse of the late 1990s. Moreover, for a country as fragmented and segmented as Indonesia, with more than 17,000 islands and hundreds of different ethnic groups, it has been able to keep a strong sense of national unity and integrity.

Although the country has faced separatist movements for decades that threatened the integrity of the nation, most of these conflicts have been successfully resolved and it is safe to conclude that the country’s national identity has been reasserted. After a long period of conflict, the separatist movement in Aceh was resolved after the government negotiated a peace agreement with *Gerakan Aceh Merdeka* (GAM, Acehese Freedom Movement) in 2005. In the context of the aftermath of the devastating tsunami that hit the region in 2004 and the unprecedented flow of donor support, GAM agreed to stay within Indonesia but under conditions of special autonomy. The rebel movement in Papua, on the other hand, has not yet been resolved. Despite efforts by various governments since 1998, the *Organisasi Papua Merdeka* (OPM, Papuan Freedom Movement) has rejected a peace plan and many indigenous Papuans continue to support independence for Papua. This opposition movement does not appear to be comparable to GAM in Aceh; it is not sufficiently well organized or armed to constitute a major challenge to Jakarta. Yet, strategically (and symbolically) the persistence of the conflict in Papua will have repercussions on Indonesia’s credibility as a modern democracy engaged as a regional and global leader.

The East Timorese, who also rebelled against Indonesia, were allowed to vote in a United Nations-sponsored referendum in 1999 and chose independence. Paradoxically, granting independence to East Timor reinforced Indonesian national identity, as a strong separatist movement was no longer a problem for the Indonesian state.¹⁶

The Islamic challenge to the nation-state initially appears to have been resolved as well, but questions remain. Parties supporting an Islamic state have declined in support from 1999 to 2009. There are only two such parties in parliament today, the *Partai Keadilan Sejahtera* (PKS, Prosperous Justice Party) and *Partai Persatuan Pembangunan* (PPP, United Development Party). Nonetheless the Islamist movement, which includes several NGOs in addition to political parties, has applied pressure on the secular state in other ways, and appears to be growing stronger.

¹³ Turnout rates in legislative elections of 1999, 2004, and 2009 were 93.3 percent, 84.9 percent, and 70.99 percent, respectively. <http://www.lsi.or.id/riset/403/Rilis%20LSI%2029%20Mei%202011>. Turnout rates in presidential elections are also high, with 75.2 percent in the second round presidential election in 2004 and 82.5 percent in the presidential elections of 2009. See IFES election guide. http://www.electionguide.org/reports1.php?region=5&country=102&type=1&round_num=0&start_month=01&start_year=2000&end_month=12&end_year=2012&submitted=1&submit.x=45&submit.y=16.

¹⁴ Saich et al., 2010, p.2.

¹⁵ Christian von Luebke, “Post-Suharto Indonesia: Democratic Consolidation and Continuing Challenges.” (Freeman Spogli Institute for International Studies, Stanford University, Fall 2009) <http://iis-db.stanford.edu/docs/381/Post-Suharto.pdf>.

¹⁶ R. William Liddle and Saiful Mujani, “Indonesia’s Democracy: From Transition to Consolidation,” in Alfred Stepan and Mirjam Kunkler, eds., *Indonesia, Islam and Democratic Consolidation*. New York: Columbia University Press, forthcoming.

Now that the process of democratic transition has been successfully completed,¹⁷ the real question becomes how strong and/or well consolidated this democracy is and how sustainable it will be in the long term. This in large part depends on the ability of the democratic government to deliver public services, create employment, reduce poverty and protect the rights of citizens.

Suharto's New Order, while obviously not democratic, was internationally recognized for its success in achieving high rates of growth and effectively reducing poverty. The World Bank, for example, singled out Indonesia for its accomplishment in poverty alleviation, reducing poverty levels from 60 percent of the total population in 1970 to 15 percent in 1990.¹⁸ The Suharto regime survived for many years not only because of its repressive and authoritarian structures, but also because it effectively delivered services and promoted economic growth. The regime did not come to an end until the deep financial crisis of 1998 undermined the capacity of the government to maintain this level of performance.

The "pro-poor" commitment has survived the democratic transition, and continues to be a strong point of consensus between the government and civil society. All governments since Suharto have introduced anti-poverty programs, albeit with different degrees of success, as shown below.

In a country as fragmented and segmented as Indonesia, where multiple ethnic groups and religions live together, consensus exists that decentralization is the best system of governance under democratic rule. From the late 1950s to the late 1990s, Indonesia had a highly centralized government. Many of the country's governance problems over the decades, including the violent reaction of groups in Aceh, East Timor and Papua, can be traced to excessive and heavy-handed centralization.

President Habibie's decision in 2001 to decentralize governmental decision-making authority and budgetary support to the districts and municipalities, which already had formally elected legislatures in place dating to the 1950s, was widely accepted at the time and continues to be strongly supported. Yet, there seems to be a weaker consensus on how to make the decentralized system work effectively, as consensus exists today that corruption and poor service delivery have intensified and become more visible as a result of decentralization.

While the assessment team was in country, the executive was already discussing some reforms in the parliament to recentralize certain functions and give provinces more powers and responsibilities over their constituent districts. While decentralization is irreversible, many of the rules of the game are still being discussed.

Whether the answer to the problem of corruption and poor service delivery is some form of recentralization or a different decentralized scheme, the consensus is that corruption and weak service delivery are the greatest enemies of democratic success.¹⁹ In the long term, sustained levels of economic growth—which averaged a rate of growth of 5.2 percent between 2000 and 2010, and steadily improved during that period²⁰—are not enough to ensure the legitimacy of democratic governance. Democracies also need to deliver quality public services and improve citizens' well-being. Here is where Indonesia's democratic consolidation may face serious challenges. Since 1998, income inequality has increased, the quality of public services has deteriorated, a high number of people still lives in poverty and Indonesia is losing economic competitiveness vis-à-vis its

¹⁷ Ibid.

¹⁸ Cited in Saich et al., 2010, p. 42.

¹⁹ According to the World Economic Forum, corruption is considered one of the most serious obstacles for doing business in Indonesia. In a Gallup poll conducted in Indonesia in 2008, 91 percent of Indonesian citizens believed their political system is very corrupt.

²⁰ Between 2007 and 2011, the economy grew by an average rate of 5.9 percent. The Economist Intelligence Unit. August 2012.

regional neighbors.²¹ An economic crisis or a prolonged period of stagnation could raise substantially the levels of dissatisfaction with democracy among Indonesians.²²

Despite the seriousness of these problems, at the elite level, there is no apparent agreement on the need for reforms to address these problems. Although champions of reform exist in all ministries and at all levels of government, they are not strong or organized enough to challenge those who still benefit from the status quo. Furthermore, some local-level champions get caught in a dense bureaucratic web and seem to lose their reform drive once they are promoted to office at the central level. While a return to authoritarianism is not an option, general disenchantment with democratic rule, growing cynicism and political apathy, or worse, support for fundamentalist groups does constitute an important threat to democratic consolidation. The latter is particularly problematic considering it is often linked with violence, intolerance and discrimination toward religious minorities and women.

2.2.2 RULE OF LAW

Since the fall of the New Order, Indonesia has made significant progress toward the establishment of the rule of law. The legal foundations of a democratic system have been formally established. The revised 1945 Constitution formally guarantees human rights and civil and political liberties. In addition to the *Mahkamah Agung* (the Supreme Court), the revised Constitution also provides for new autonomous judicial bodies: the *Mahkamah Konstitusi* (the Constitutional Court) with powers of judicial review, and the *Komisi Yudisial* (the Judicial Commission) to discipline judges and root out corruption in the judiciary. Indonesia is a signatory to the United Nations (UN) convention on human rights, and it has a long-established National Human Rights Commission to receive complaints on human rights abuses and an Ombudsman Commission to handle complaints about public services.

The amendments to the 1945 Constitution also created the formal legal basis for a working presidential system in which the president and the *Dewan Perwakilan Rakyat* (DPR, the parliament) are elected directly and separately every five years. The path to political power is through a competitive electoral system of which rules are for the most part, widely accepted.

In addition to these constitutional amendments, since 1999, the country has introduced substantive political and institutional reforms protecting rights such as freedom of the press, freedom of expression and access to public information. The military has been stripped of its political power and restricted to defending the country against foreign enemies. The police were separated from the army and given the responsibility to protect domestic order. Since 2002, when terrorist groups linked to Al Qaeda attacked Westerners in Bali, killing 202 people, the police have effectively combatted terrorism and dismantled several terrorist cells.²³ Significantly, the government established an anti-corruption commission (*Komisi Pemberantasan Korupsi* [KPK], or Corruption Eradication Commission), endowing it with considerable powers to investigate and prosecute corrupt officials. Since its creation in 2004, this commission has prosecuted more than 100 cases of “extraordinary corruption” (grand corruption) including members of parliament (MPs), ministers, provincial governors, ambassadors and business executives.²⁴

Despite these extraordinary achievements, the country continues to confront daunting challenges in establishing a fair, impartial and equitable judicial system. Indeed, weakness in the rule of law constitutes one of the most serious governance problems in Indonesia today. The weaknesses stem from the lack of judicial

²¹ This is the most significant conclusion of the Ash Center report (Saich et al. 2010).

²² Data and analyses from the Indonesian Survey Institute show that there is a statistical link between perceptions of a positive national economic condition, on the one hand, and satisfaction with the government’s democratic performance. See Liddle and Mujani, forthcoming.

²³ According to a recent New York Times report, since 2003, the Indonesian police have “arrested more than 700 militants and killed about 60”. NYT, October 29, 2012.

²⁴ <http://www.article2.org/mainfile.php/0901/367/>.

independence, a legacy of entrenched corruption and bureaucratic ineffectiveness, and the practice of constantly moving judges and prosecutors around the country, leading to lack of specialized skills and fewer incentives for lawyers to join the public sector.

Since independence in 1945, with the partial exception of a brief democratic period in the 1950s, Indonesia's judicial system has been subordinated to the executive branch. Decisions have largely been arbitrary, often at the behest of the president or his officials when not the result of bribes. The legal profession has been discredited and judicial institutions are distrusted. The best and brightest lawyers in the country have not been attracted to serve in the public sector. This culture of subordination, incompetence and lack of integrity within the judicial system continues today.

Perhaps the single most important flaw in Indonesia's current judicial system is that the institutional procedures designed to nominate judges to the Supreme Court continue to undermine judicial independence. Although new judicial institutions like the Constitutional Court and the Judicial Council have been established to strengthen the justice system, the system's lack of independence has not been fully overcome. Supreme Court judges are selected by the House of Representatives (DPR) from a list of candidates submitted by the Judicial Commission. The selected candidates are then confirmed by the president. The problem is that the Judicial Commission presents the DPR with more candidates than there are positions available. The process becomes politicized as selection and nomination of judges becomes a matter of negotiation between different political parties. The process discourages an adequate vetting of the candidate's record, as nominations are not based on merit but on special interests and political favoritism.

The result, according to a prominent lawyer interviewed for this assessment is that "the House of Representatives ends up choosing the weakest and most corruption-prone candidates for the Supreme Court. Candidates also come from the worst law schools in the country, for the best lawyers do not want to work in the Supreme Court." Judges for the lower courts are selected by the Judicial Commission, but as this lawyer also acknowledged, "the Judicial Commission lacks teeth; it is subordinated to the Supreme Court, which has already filed a judicial review to weaken the Commission's ability to sanction and discipline judges."

The consequences of lack of judicial independence reverberate through the entire justice system as well as the legal profession, which suffers from the contempt of judges and the system's overall lack of integrity. The Attorney General's Office (AGO) and the national police, in particular, are some of the institutions frequently regarded as corrupt and distrusted by Indonesian citizens.²⁵ A combination of poor salaries, weak internal controls and lack of political will at the top to strengthen the independence and performance of these institutions generates strong incentives for the perpetuation of incompetence and proliferation of corrupt practices.

In a political system where money buys influence and justice, the most fundamental principle of the rule of law, namely that laws are equitably applied, is undermined. Legal certainty becomes compromised as judicial decisions can be bought and sold to the highest bidder. Not surprisingly, the World Bank ranks Indonesia as a low performer in its *Doing Business Survey*, particularly with regard to "the ease of enforcing contracts," standing at 144 in the ranking of 185 economies.²⁶ For all its merits, KPK is limited in its capacity to confront and combat corruption effectively, particularly considering its size and resources and most importantly, when

²⁵ LSI, "Kepercayaan Publik pada Pemberantasan Korupsi [Public Trust in Corruption Eradication]" (2012). http://www.lsi.or.id/riset/409/Rilis_LSI_Korupsi. The police have been effective in combatting terrorism, but not in guaranteeing the rule of law in the country. They are regarded as highly corrupt, and with their recent success in combatting terrorism and drug trafficking, the police have actually been so empowered that the executive is hesitant to challenge police leadership and introduce reforms. Interview with members of Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan (UKP4, Presidential Working Unit for Supervision and Management of Development). Jakarta, October 16, 2012.

²⁶ See World Bank, *Doing Business 2013. Indonesia*. <http://www.doingbusiness.org/~media/giawb/doing%20business/documents/profiles/country/IDN.pdf>. According to data collected by *Doing Business*, enforcing a contract takes 498 days, costs 139.4 percent of the value of the claim and requires 40 procedures. There has been no improvement since 2004.

the commitment from the top seems to be weakening.²⁷ Indeed, KPK's success in prosecuting corrupt cases has unleashed strong reaction from top government authorities and political parties, and it is only through unprecedented popular support that the institution has been able to carry on with its tasks.

The weakness of the rule of law negatively affects the business environment and undermines Indonesia's economic competitiveness, but it particularly affects the poor and those without sufficient resources to buy justice and seek legal protection. Land tenure conflicts, perhaps the most predominant problem in the country, are not effectively resolved in the courts of law. The inability (and/or unwillingness) of the justice system to resolve these issues often results in evictions, violence and police abuse. The biggest cases of human rights abuses reported to the National Human Rights Commission are related to land disputes, as local communities are evicted from lands they traditionally claim as their own. Yet, as commissioners interviewed for this assessment reported, "human rights violations cases do not get prosecuted."

Cases of domestic violence and discrimination against religious minorities are also not effectively resolved by the judicial system. In those few cases where the courts intervene and resolve disputes, the court's decisions are not enforced. More often than not, the central government and police stand by and refrain from taking appropriate action. The most prominent example is the Yasmin church dispute in Bogor, West Java, where the mayor, pressed by religious fundamentalists, revoked a permit obtained by Christians and endorsed by the Supreme Court to build a church while the police, following a "hands off" approach from the central government, refused to act.²⁸ Local government officials face few consequences for defying national legislation, refusing to enforce national court rulings or violating the Constitution. As the International Crisis Group argues, "defying rulings from the country's highest courts has never been defined as a crime. In fact, Indonesia does not have any specific legislation on contempt of court."²⁹ This individual case of impunity in Bogor reflects a bigger problem with the judicial system in Indonesia, namely, a system that remains corrupt, inefficient and incapable of applying the law fairly and impartially and protecting citizens' rights.

For several decades, indigenous peoples of Indonesia have engaged in a low-level struggle against the loss of their rights, including in some cases land and control over natural resources. Much of the problem stems from large-scale projects such as palm oil plantations and logging concessions that infringe upon ancestral lands. Activists focusing on the protection of indigenous rights have sought to raise their profile through both national and international coordination.

2.2.3 COMPETITION AND POLITICAL ACCOUNTABILITY

Since 1998, Indonesia has successfully undertaken three national electoral cycles with relatively minor post-electoral conflicts. The institutionalization of a peaceful transfer of power through democratic elections is in place. At the local level, Indonesian citizens have elected more than a thousand local executives. Although more evidence of fraud and electoral irregularities exist in local elections, voter turnout has remained high and post-electoral disputes have not resulted in violence and/or unmanageable conflict.

During the past 14 years, Indonesia has emerged as an open and highly competitive democratic system. Indeed, compared to its neighbors, Indonesia is the country with the most vibrant, dynamic and open democratic system. Still, the electoral system and the structure of political accountability remain in need of improvement.³⁰

²⁷ In the process, it has developed broad support in the society but also many enemies in high places, including the political parties in parliament and many government agencies, which both resent its success and fear its spotlight. Please see the sections below for more detail on these points.

²⁸ International Crisis Group, "Indonesia: Defying the State." Asia Briefing N. 138. (2012c). [http://www.crisisgroup.org/~media/Files/asia/south-east-asia/indonesia/b138-indonesia-defying-the-state.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/indonesia/b138-indonesia-defying-the-state.pdf)

²⁹ International Crisis Group, 2012c., p. 17.

³⁰ Saich et al., 2010, p. 2. <http://unpan1.un.org/intradoc/groups/public/documents/UN-DPADM/UNPAN042322.pdf>.

A recent electoral assessment conducted for USAID concluded that Indonesia's electoral authorities confront serious administrative weaknesses that undermine their capacity to guarantee free and fair elections. Most significantly, the report states that the 2009 elections were "marred by significant failures of election administration, especially a chaotic voter list, poor voter education leading to a very high invalid vote rate of 14 percent, and an electronic vote tabulation system that broke down and had to be abandoned."³¹ The report concludes that a weak legal framework, including regulations on political finance and campaign expenditures, lack of capacity of election authorities and poor election administration, weak law enforcement, ineffective voter education and insufficient budget allocations to electoral authorities, constitute the most important threats to the integrity of the electoral system and the results of the 2014 elections.³²

Political competition is high, with 38 parties competing for office in the 2009 parliamentary election and nine parties with seats in the 2009-2014 DPR. The high number of political parties, however, is in fact a reflection of a sometimes dysfunctional and non-representative political system, where parties cease—for the most part—to articulate, aggregate and represent interests.³³ Parties, as political institutions, are weak, non-representative and highly dependent on those who fund them. In Indonesia, money is the main driver of politics—not ideology, programs or policies. Candidates are responsible for funding their political campaigns and use political parties only as a platform for gaining access to power. Candidates rely on patronage networks to curry electoral support and mobilize people on a clientelistic basis, rather than on programmatic principles.³⁴

In a system where political parties lack a programmatic platform and where parties have weak internal structures and few controls, it is the candidate—especially candidates for executive office—who choose the party and not the other way around. Although the party system does not formally discriminate on the basis of religion, gender, age or ethnicity, parties do not adequately represent different constituencies. As we discuss below, women's participation in the electoral front has increased over the past decade, but women still face informal barriers for full inclusion (see next section) and they continue to be underrepresented in public office, particularly at the local level.

A good indicator of the weakness of political parties as organizations is the extremely low percentage of people that identify with a particular political party. According to survey data collected by *Lembaga Survei Indonesia* (LSI, Indonesian Survey Institute), from 1999 to 2009, the percentage of people that said they identified or had a close affinity with a political party dropped from 86 percent in 1999 to 23 percent in 2009. The drop is quite dramatic and revealing.³⁵

Political parties are highly distrusted by Indonesian citizens. In fact, parties, along with the House of Representatives, are typically regarded as the fulcrum of corruption.³⁶ Yet, to date, there are few incentives for parties to reach out to their constituents, articulate their interests and represent them more effectively, particularly in between elections. The introduction of an open party list electoral system in 2009 was indeed an attempt to make candidates more accountable to their constituencies, but without campaign finance

³¹ USAID. "Programming Assessment for Indonesia's 2014 National Elections. Recommendations for USAID" (2012).

³² Ibid.

³³ There are a few notable exceptions. In the anti-pornography law case, for example, *Partai Demokrasi Indonesia Perjuangan* (PDIP, Indonesian Democracy Party of Struggle) effectively articulated and represented the interests of Christians and Muslim moderates, while Golkar and *Partai Demokrasi Indonesia* (PD, Indonesian Democracy Party) represented the interests of their more conservative Muslim constituencies.

³⁴ It is important to acknowledge that some reforms, like increasing the electoral threshold to register a party, have been introduced to reduce the level of political fragmentation. The number of parties has decreased since 1998, but nine parties is still a high number.

³⁵ Liddle and Mujani. The reason identification was high in 1999 was mostly identification with PDIP (Megawati's party, the challenger to Suharto); plus PPP, the Muslim party from the Suharto years; PAN (Amien Rais's party); and PKB (Abdurrahman Wahid's party). Each of these parties had a social base and a high level of popular awareness and support.

³⁶ According to survey data, Indonesians regard the political party as the most corrupt institution in their country, followed by the House of Representatives. LSI, Dec 2012. Jan 2012. http://www.lsi.or.id/riset/409/Rilis_LSI_Korupsi.

reform, this objective remains unfeasible. What is more, the introduction of open lists in 2009 seems in fact to have weakened political parties; they are now less able to control the recruitment process and discipline their own candidates and elected officials.

According to a prominent anti-corruption advocate, political party leaders have become increasingly concerned with political parties' negative reputation and with the high level of distrust in which they are held by the majority of Indonesian citizenry. Party leaders recognize that parties face difficult problems, such as the loss of control over candidate recruitment and the parties' virtual capitulation to those who have sufficient resources to fund their campaigns. In response to these problems, party leaders are beginning to discuss ways to reform their candidate recruitment systems. Transparency International has created a new movement to address these problems—the so-called *Rumah Kebangsaan: Gerakan Indonesia Memilih* (House of Nationhood: Indonesian Movement to Vote). The movement convenes prominent Indonesian intellectuals and political leaders to discuss alternative candidate selection mechanisms. To the extent it continues, this effort may indeed become an important political opening for reform.

Besides political rivalry, competition among media outlets has significantly increased. The media have become an important watchdog of government affairs. Additionally, the growth of social media networks has provided middle class citizens with an unparalleled medium to express their concerns and articulate their demands. For instance, on October 2012, citizens expressed their rage against the national police—widely perceived as one of the most corrupt public institutions in the country—for obstructing an anti-corruption case against the police handled by the country's Corruption Eradication Commission, KPK. The social pressure was so strong that it forced President Susilo Bambang Yudhoyono—who had heretofore been hesitant to take sides—to issue a statement supporting the efforts of KPK to investigate the case, which allegedly involved a police general and several other high-ranking officers within the police force. What this case reveals—beyond the importance of the high-level corruption case involved in this scandal—is that social pressure, when it is organized and well-articulated, can actually have a significant effect in mobilizing the political will for reform.³⁷

The quality of public debate on substantive policy issues in the written media, however, is weak. Debates are quite shallow and during elections are dominated by personality traits.

In terms of competition between the different branches of government, Indonesia still suffers from dysfunctional checks and balances and weak horizontal and vertical systems of accountability. In contrast to the past, when the executive dominated the political landscape, today the legislative branch is more empowered to check and balance the executive. But the legislature is also regarded as a lever of corruption in the country. By controlling nominations to the Supreme Court, it also has gained power vis-à-vis the judicial system. In contrast, the Constitutional Court has indeed become an effective check on legislative and executive power and a final arbiter on constitutional disputes. For example, in 2009, it declared the closed list provision of the 2008 electoral law unconstitutional. More recently, in 2012, the court made an important ruling that opened the way for a more vigorous KPK oversight of regional governments.³⁸

With decentralization starting in 2001, local governments (districts and municipalities) have received significant financial resources and broad legislative and executive authority. The balance between central and local government authorities, however, has rendered the system highly unaccountable and dysfunctional. Overlapping and often contradictory regulations between the central and local governments seem to be

³⁷ This was actually not an isolated case. Citizens have used social media to mobilize against the authorities several times. One of the most famous cases is the Internet-based protest movement of “geckos” in support of the KPK officials in 2009. See Saich et al., 2010, p. 93. See also Budi Setiyono and Ross H. McLeod, “Civil Society Organizations' Contribution to the Anti-corruption Movement in Indonesia,” (Bulletin of Indonesian Economic Studies, November 2010) p. 355. The authors persuasively argue that the anti-corruption reform agenda derives mostly from civil society demanding change.

³⁸ The court ruled that a provision in the law on regional government that required presidential agreement for the KPK to bring criminal indictments against a sitting district head or mayor was unconstitutional.

commonplace, generating confusion among citizens and motivating the use of bribes as a way to get matters resolved. Financial controls exist to make local governments accountable for the resources they receive from the central government, but they are weak and ineffective. In the decentralization process, provincial governments were bypassed and play no significant role in controlling and balancing the power of local governments. Yet, the introduction of direct elections for mayor and district heads has strengthened the system of vertical accountability, for citizens are now more empowered to demand greater accountability from their governments. At least every five years, citizens can vote bad public officials out of office. Obviously, elections are neither sufficient nor the most effective mechanism to demand accountability, but in a country traditionally ruled by authoritarian and highly unaccountable politicians, this is an important step in the right direction. Nowhere is this clearer than in the recent election for governor of the capital city of Jakarta, where the candidate, Joko Widodo or “Jokowi,” made his reputation as a good and effective mayor of Surakarta (Solo) in central Java and was able to defeat the heavily funded incumbent.

With regard to economic competition, Indonesia’s democracy has maintained economic growth and financial stability, allowing many small- and medium-sized businesses to proliferate. Several medium-sized cities outside Jakarta, like Medan, Bandung and Surabaya, have experienced dynamic growth, decreasing the level of economic concentration in the capital. Yet, compared to other countries in the region, Indonesia is not competitive enough. Indonesia was ranked 54 out of 133 countries in the 2009-2020 World Economic Forum Global Competitiveness Report, which placed Indonesia considerably ahead of the Philippines (87) and Vietnam (75), but behind Malaysia (24), China (29), Thailand (36) and India (49).³⁹ Low investments in infrastructure, health and education, and a bloated and corrupt bureaucracy have reduced the country’s economic competitiveness.

2.2.4 INCLUSION

Indonesia is a multi-ethnic and multi-cultural country, deeply fragmented and spread across more than 17,000 islands. Yet, the country has one national language and Indonesians have a strong sense of national pride, believing they are emerging as a world power, notwithstanding development challenges the country still faces.

Indonesia’s national identity was established during the 1945-1949 revolutionary period. The nationalist movement of that time, with roots in the pre-war colonial period, took power in the wake of the Japanese occupation. Their definition of the Indonesian nation-state was the people living in the territory which had been the Dutch East Indies until 1942. This was, in principle, very inclusive—not based on race, ethnicity or religion. In the 1950s up to 1965, there were attempts to separate on the basis of ethnicity/regionalism or turn Indonesia into an Islamic state, but none of these succeeded.

During the 32 years of Suharto’s rule, issues of national identity were suppressed. GAM, the Aceh freedom movement, grew in opposition to this suppression and finally exploded in the late 1980s. Since 1963, there was also hostility and opposition to Indonesia in Papua, when the United Nations transferred administration to the Republic of Indonesia. A new problem was added in 1975 when Suharto’s government invaded and occupied East Timor, previously a Portuguese (not a Dutch) colony.

In 1999, President Habibie, Suharto’s vice president and constitutional successor, offered the East Timorese a UN-supervised referendum. Pro-independence forces won a decisive victory, and after months of violence, the Indonesian government accepted the referendum results and Timor-Leste became an independent country.

With the independence of East Timor, Indonesia’s integrity as a country was further challenged by two separatist movements living in the country’s most eastern and western outward provinces: Aceh and Papua. The conflict in Aceh was resolved in 2005 through negotiation, and Aceh is now included as part of

³⁹ Saich et al., 2010, p. 16.

Indonesia, although it enjoys special autonomy status. Papua remains in conflict, but as mentioned above, the rebel movement is not well organized and does not pose an immediate threat to the integrity of Indonesia.⁴⁰

Aside from the ethnic and cultural dimension of the separatist movement in Papua, the problem in Papua is one of exclusion. For generations, indigenous Papuans have been excluded from the benefits of the country's economic growth. Despite living in a province richly endowed with natural resources, Papuans have been excluded from the benefits of the exploitation of these resources. According to data provided by the Central Bureau of Statistics and the United Nations Human Development Indicators, Papua is one of the Indonesian provinces with the highest rates of poverty, where more than 35 percent of the population lives below the poverty line (compared to an average 18 percent at the national level). In Papua, exclusion coupled with ethnic identity has led to separatism.

Formally, of course, the Indonesian Constitution and legal system do not exclude anyone from political, social and/or economic rights. Yet, in practice, many citizens continue to be excluded on economic, religious and/or gender bases. Women, for example, face informal barriers to full inclusion, as they are still excluded from economic and political life, particularly at the regional level.⁴¹ The rising fundamentalism and religious conservatism has also empowered some districts, particularly in Tangerang (Banten province); Bulukumba (South Sulawesi province); and several other districts in West Sumatra province including Bukittinggi, Padang and Agam⁴² to introduce ordinances that discriminate against women. With the exception of Aceh, shari'a law is not formally recognized into the body of the law. Yet some districts have issued ordinances in the spirit of shari'a law, restricting the rights of women to walk alone after dark and mandating a dress code for all Muslim women.

Lesbian, gay, bisexual, and transgender (LGBT) rights are still an issue, but even Indonesians have been surprised at how much progress has been made. For example, a prominent gay activist was nominated for Commissioner of Human Rights. He also made it through the fit and proper test, although in the end he did not obtain the position. Many noted that the fact that he was nominated and made it that far meant progress was being made in the area of human rights and inclusion. While this is progress for gay males in Indonesia, this is not indicative of other groups covered within the LGBT rights area. The Constitution recognizes freedom of religion, but religious freedom is in fact threatened. Only six religions are accepted—Islam, Hinduism, Buddhism, Catholicism, Protestantism and Confucianism—as official religions. More importantly, state authorities determine what constitutes acceptable religious belief. In the case of Islam, this has increasingly meant that members of Ahmadiyah, a sect that recognizes a prophet after Muhammad, are excluded and marginalized. The Council of Ulama and a Joint Ministerial Decree⁴³ have in fact formally excluded Ahmadiyah and other Islamic sects as non-Muslims, which has led to intolerance and violent confrontation.

On the positive side, the Sino-Indonesian population—an ethnic group that has historically been marginalized in Indonesian society—has been increasingly included into the mainstream of political and cultural life in Indonesia. Discrimination against the Chinese started in the Dutch colonial period, when Chinese were brought in as laborers and came as traders but were not allowed to own land. President Sukarno issued an order forcing them to move to large cities. He allowed them to conduct business—indeed, he relied on their business ability to develop the economy and enrich himself, his political party and his supporters in

⁴⁰ See USAID's Strategic Assessment of Papua. July, 17, 2012. This assessment team did not visit Papua precisely because a separate assessment on the situation of Papua had already been conducted.

⁴¹ The National Commission on Women's Rights has recorded a significant increase in the numbers of discriminatory policies at the local level from 2009-2012, from 154 to 282. Two hundred and seven of these policies have directly discriminated against women such as a dress code imposition, criminalization against women prostitutes and curfew against women. <http://www.komnasperempuan.or.id/wp-content/uploads/2012/09/Lembar-Fakta-Kasus-Putri.pdf> (Accessed on 31 October 2012).

⁴² <http://nasional.kompas.com/read/2012/11/23/05393810/Komnas.Perempuan.Temukan.282.Perda.Diskriminatif>.

⁴³ The decree was signed on 9 June 2008 by the Minister of Religious Affairs, the Minister of Home Affairs and the Attorney General, ordering among other things that the Ahmadiyah followers stop holding activities that contradict Islam.

the military. But their identity cards continued to mark them as a separate group and they were denied the right to celebrate their holidays publicly. Chinese characters were also banned in public, including in newspapers. Indonesian became the language of instruction in all Sino-Indonesian schools, which forbade the teaching of Mandarin or other Chinese languages. All of these restrictions were lifted after the fall of Suharto.

During the past 14 years, Indonesia has experienced more inclusionary economic development, with medium-sized cities growing at a faster rate than Jakarta and decreasing the level of concentration of economic activity in Jakarta. Cities like Medan, Bandung and Surabaya have been growing at a rate of 6.4 percent since 2002, while Jakarta has grown at a rate of 5.8 percent.⁴⁴ Yet, many citizens have been virtually excluded from the fruits of economic growth, as an estimated 18.7 percent of the population continues to live below the poverty line.⁴⁵ The poverty line is itself a controversial issue, as many contend that it is deliberately set too low by the Indonesian government. If the level were raised slightly, millions more would be considered to be living in poverty.⁴⁶

Although separatism is no longer a national threat, in many parts of Indonesia exclusion has led to other forms of violence. Fundamentalist organizations often recruit young and unemployed people—especially if they come from poor families—to build their strongholds through intimidation and violence. With few alternatives available, the fundamentalist groups offer protection and a sense of identity to those who have nothing to lose.

2.2.5 GOVERNMENT EFFECTIVENESS

The Suharto regime was highly centralized, authoritarian and corrupt. Yet, in terms of government effectiveness, this regime had a startling record. For nearly 30 years, Suharto's New Order managed to sustain economic growth rates averaging nearly eight percent per year and to substantially reduce poverty rates. Income inequality remained stable during this period and Indonesia compared favorably on this dimension to other countries in the region. As noted above, investments in infrastructure, particularly in agriculture and roads, and basic public services like health and education contributed to the success story. A well-educated and competent team of policymakers played a key role in designing and implementing the “pro-poor growth” strategy. Indeed, the economic policies implemented during the New Order gained international recognition and were held up as a model for other developing countries.⁴⁷ The deep financial crisis of 1998 brought this regime and its policies to an abrupt end.

Since the transition to democracy, economic growth has recovered, albeit not at the same high rate. Indonesia has achieved stable GDP growth of five to six percent per year.⁴⁸ But executive and legislative actions are needed to address the shortcomings of the business environment—which as the World Economic Forum reveals, are related to crumbling infrastructure and high levels of corruption—and to improve the quality of public services. As C. Peter Timmer persuasively argues,

Although democracy has probably increased the size and influence of the coalition concerned with poverty, it has greatly undermined the coalition supporting economic growth as the main mechanism for dealing

⁴⁴ The McKinsey Global Institute. “The Archipelago economy: Unleashing Indonesian potential.” September 2012.

⁴⁵ UN, Human Development Indicators. 2011. <http://hdrstats.undp.org/en/countries/profiles/IDN.html>.

⁴⁶ Saich et al. makes this argument. 2010, p. 42.

⁴⁷ C. Peter Timmer, “How Indonesia connected the poor to rapid economic growth.” In Timothy Besley and Louise J. Cord, eds. *Delivering on the Promise of Pro-Poor Growth. Insights and Lessons from Country Experiences.* (World Bank, 2007), p. 32 According to Timmer, income per capita increased by five percent per year between 1967 and 1996.

⁴⁸ Economist Intelligence Unit, August 27, 2012.

*with poverty. The problem, of course, is not with democracy itself, but with lack of democratic institutions that provide real accountability of government to constituencies.*⁴⁹

As a consequence, anti-poverty policy has centered on subsidies and conditional cash transfers, rather than on more structural and long-term policies that can promote new investments, create employment and expand the domestic market.⁵⁰ Indeed, Indonesia seems to be trailing behind most of its neighbors with regard to Human Development Indicators. In 2011, Indonesia scored a rate of 0.617 in the Human Development Index (HDI), below the East Asia and Pacific average of 0.671.⁵¹

With democratization, the Indonesian bureaucracy has become increasingly bloated and complex. Given that the transition to democracy came after the abdication of Suharto rather than a revolution from below, much of the bureaucratic infrastructure of the Suharto regime was never fully dismantled. For example, the civil service has not been substantially reformed since the transition to democracy. Civil servants continue to have few incentives to improve performance, for internal controls are weak and performance standards virtually nonexistent.

To overcome deadlock and allow different governments to get things done, governments often create new agencies and commissions, endowed with parallel and overlapping functions and responsibilities with established bureaucratic agencies. The latter not only creates confusion, but has led to turf battles between agencies—for example, between the Judicial Commission and the Supreme Court, the police and KPK, and KPK and AGO.⁵² The result is a complex and confusing web of agencies, regulations and procedures that make bureaucratic processes cumbersome and obstruct the government's capacity to implement serious and sustainable reforms. As one interviewee in AGO recognized, “the Attorney General's Office has an enormous staff of more than 22,000 officials. Changing the institution is extremely difficult. It is like a big ship that takes a long time to make a turn”.

To complicate matters, in 2001, the government introduced a sweeping decentralization reform in which the central government transferred resources and functions to district and municipality governments. Local governments became responsible for the provision of services, including education, health, agriculture, transportation and infrastructure.⁵³ More than 2.5 million civil servants were transferred from Jakarta to the local level to facilitate this administration.⁵⁴ The decentralization process was done in haste, after a short preparation period, and it was massive in scope, a reason why it was dubbed a “big bang.” Perhaps because of the rapid pace of this process, particularly considering the heavily centralized system that preceded it, decentralization has also increased confusion and engendered bureaucratic deadlock.

Intergovernmental relations are characterized by lack of coherence and coordination between central and local authorities, unclear regulations if not outright contradictions between the local and central governments and new layers of bureaucratic procedures. Moreover, the majority of local governments lack the capacity and skills to undertake the new functions that have been transferred to them. Additionally, the system of internal and external controls to ensure quality of service delivery, integrity of public officials and accountability of resources were nonexistent, or weak at best.

⁴⁹ Timmer, 2007, p. 52.

⁵⁰ The single largest budgetary expenditure in Indonesia is the fuel subsidy, totaling over U.S. \$105 billion (2009-2013), and according to the Freedom House report, accounting for 18 percent of the annual budget. While this subsidy is popular, it by no means targets or benefits the poor. Big expenditures in paying for the fuel subsidy reduce the resources available for education, health and infrastructure.

⁵¹ United Nations Human Development Indicators. <http://hdrstats.undp.org/en/countries/profiles/IDN.html>.

⁵² Saich et al., 2010, p. 93.

⁵³ USAID. Democratic Decentralization Strategic Assessment: Indonesia—Final Report (2009).

⁵⁴ von Luebke, 2009.

Civil society at the local level, on the other hand, has generally been too weak or too passive in demanding better service delivery. In fact, opinion polls reveal that most citizens are actually quite satisfied with the quality of health and education services they receive. In 2009, the last opinion survey available, 78 percent of citizens reported that government performance in health and education was good.⁵⁵ Although the conclusions of this survey require further research, the results are nonetheless puzzling. The same survey reveals that citizens are by far less satisfied with government performance in poverty reduction (54 percent) and reduction of unemployment (51.3 percent). Furthermore, these results are consistent with opinions expressed in several interviews about the complacency of Indonesian citizens with the quality of education and health services they receive. For example, a representative of the central government's Ministry of Education in Palangkaraya said in an interview "parents only care about the scores their children obtain in their exams. They do not care whether their children are educated. In Central Kalimantan the quality of education is very bad, but students still manage to do well on the national test." Almost 10 years after decentralization, the results are mixed. With the introduction of direct elections for mayors and district heads, few local governments have responded satisfactorily to the new responsibilities and functions. There are a few success stories at the local level, however, that have been duly recognized by some civil society and media organizations which have been overseeing and evaluating local government performance and granting prizes to best performers.⁵⁶ However, most local governments still face enormous challenges of capacity and accountability, both to the central government and to the citizenry at large.

Not surprisingly, the decentralization process has also brought the decentralization of corruption. Whether corruption has increased since the downfall of Suharto is hard to tell, but the collapse of the highly hierarchical structure of government has definitely distributed corrupt practices more evenly, and since the press is freer today, corruption scandals are more widely reported, which makes corruption more visible to the average citizen. According to a Gallup poll conducted in Indonesia in 2008, 91 percent of Indonesians perceived that corruption was widespread throughout the government.

What is clear, however, is that the increasing authority of local governments along the multiple layers of bureaucracy and regulation that have been created as a result of decentralization have increased the costs of doing business in Indonesia. As one prominent businessman in Jakarta acknowledged,

Democracy is here to stay, yet we seem to be suffering from 'excessive democracy.' Now there are too many processes, regulations, licenses which are often contradictory....With decentralization, everyone is now a 'little king.' During the Suharto years, corruption was widespread, but we only had to pay him and only once. More importantly, there was certainty on the deal. Today, we have to pay multiple times to different people and there is no certainty on the outcome of the deal.

Compared to the Suharto regime, it is fair to conclude that government effectiveness has not improved and in fact, has deteriorated, particularly with regard to service delivery, infrastructure development and poverty alleviation. Compared to its neighbors, Indonesia is in fact underperforming in terms of basic social indicators and economic competitiveness. The problems Indonesia faces are complex; aside from the challenges of decentralization, a bloated bureaucracy largely inherited from the Suharto regime also militates against change, especially considering civil service has not been effectively reformed. In fact, although a serious civil service reform is now being discussed in parliament, there are many interests with a stake in the status quo and sufficient power to obstruct an initiative to make civil servants more accountable, efficient, responsible and less corrupt.

⁵⁵ Indonesian Survey Institute (LSI), Opinion Survey, 2009.

⁵⁶ The Jawa Pos Institute for Pro-Otonomi (JPIP), within the Jawa Pos (Java Post) newspaper, the largest circulation newspaper in East Java, has sponsored an annual best-practices competition among district and municipal governments in East Java for the past 11 years. Fajar (Dawn), a Jawa Pos-affiliated newspaper in Makassar, South Sulawesi, runs a similar competition in that province.

2.3 SUMMARY

Fourteen years after the fall of Suharto, Indonesia has emerged as a competitive and decentralized democracy. It is the most vibrant, open and competitive democracy in the region. Considering the heavily centralized and authoritarian nature of the regime that preceded it, the transformation is indeed impressive. Yet, although the formal structures of democracy have been established, many legacies of the past remain and the country still confronts difficult developmental challenges that, if unsolved, will impede the country's emergence as an economic world power. Low investments in infrastructure, health and education, coupled with systemic corruption and bureaucratic deadlock work against Indonesian's competitiveness.

While Indonesia outperforms its Southeast Asian neighbors in its electoral record political stability, in economic terms, Indonesia is falling behind. As the Ash Center persuasively argues, although the Indonesian economy is growing, "Indonesia is losing ground to China, India, Thailand, Malaysia, Vietnam and the Philippines in foreign direct investment flows, manufacturing, infrastructure and education. Indonesia's social indicators are also lagging behind other middle income countries."⁵⁷

These problems are not only economic in nature, they are also governance problems. They are related to policy decisions on how resources are allocated to different social needs; to the technical capacity of public officials at different levels of government to deliver services; to the ability of the government to reduce the risks of doing business and attract greater private investments; to the strength of NGOs to demand better service delivery and greater accountability of government officials; and ultimately, to the political will of top government officials to recognize the challenges they face, and introduce substantive reforms even when that implies alienating important stakeholders with vested interests in preserving the status quo.

Poor service delivery along with a weak and deeply corrupt justice system constitute the most important governance challenges in Indonesia today. That is, the main governance challenges are in the arena of government effectiveness and rule of law.⁵⁸

Many of the problems of corruption, a compromised judiciary and weak law enforcement were inherited from the Suharto regime. Indeed, the transition to democracy, for all its transformative power, has not changed what Indonesians call "the bureaucratic mind set" of public officials, or the traditional way of doing things. This is in large part the result of the failure of the Indonesian government to introduce stronger incentives to increase the performance and integrity of public officials. According to many people interviewed for this assessment, the government at the top, despite its strong pledge for anti-corruption reform, seems to have capitulated to powerful vested interests that benefit from the obstruction of reforms. As one reform-minded official said, "The President campaigned as Robin Hood, but has ruled as Pinocchio."⁵⁹

Unlike the Suharto regime, political stability and the legitimacy of democracy rely on the ability of the democratic government to deliver. Here is where Indonesia continues to face serious challenges. As demonstrated in this section, Indonesia is falling behind most of its neighbors in terms of investments in infrastructure development and in health and education; inequality rates are growing and a high number of people remain in poverty. To the extent that the government remains unable to address the needs and demands of citizens and improve living standards for the majority, the consolidation of democracy remains at stake.

⁵⁷ Saich et al., 2010, p. v.

⁵⁸ These conclusions are similar to the previous democracy and governance assessment conducted in Indonesia in 2009. See USAID, 2009, p. 6.

⁵⁹ Confidential interview, Jakarta, October 4, 2012.

3.0 STEP TWO: ANALYZING KEY ACTORS AND INSTITUTIONS

3.1 STAKEHOLDER ANALYSIS

Institutions and rules—both formal and informal—shape behavior by structuring the set of opportunities and constraints stakeholders confront in different settings. Public officials are not necessarily “born” with good ethical standards and/or commitment to public service; they learn these qualities as they confront both rewards and negative consequences for unethical and/or inefficient behavior. Corrupt and unproductive officials are neither ignorant nor unaware that their actions are wrong and/or illicit. They know it and in fact, this is why they do everything possible to hide their deals. They continue to underperform and engage in corrupt practices simply because the opportunities to profit from this pattern of behavior surpass the risks of being caught and sanctioned. In a system where corruption is systemic and endemic, and where no rewards exist for productivity, it is actually considered “foolish” to behave with integrity and greater diligence.

In Indonesia, the transition to democracy did not effectively dismantle the structure of opportunities for engaging in corrupt behavior.

Despite the many advances on the political front, the country’s “constituency of corruption” has remained relatively untouched. The latter includes top public officials who benefit from opacity and unclear business deals, particularly those responsible for issuing regulations and granting permits and officials who work in the national police, the AGO, the Supreme Court, and of course, parliament. Additionally, the constituency includes business people and political party leaders (often indistinguishable from one another) who are ready and willing (and some often forced) to strike deals with corrupt government officials. Finally, the constituency includes citizens who are disempowered and/or discouraged to confront corrupt public officials who refuse to offer public services if a bribe is not paid up front. Although the KPK has been successful in removing some of “the rotten apples from the barrel,” by itself, the punitive-based strategy is not effective in altering the structure of incentives that generate or motivate corruption in the first place.

With the exception of the recently introduced electoral reforms that allow for direct elections of local government authorities, most accountability mechanisms in Indonesia remain extremely weak. Of course, in Indonesia’s enormously complex bureaucratic and institutional maze, there are many champions of reform at the local and national levels: public officials who believe that in the long term, the public interest suffers from entrenched corruption and inefficiency, and that the future success of Indonesia as a world economic power rests on its ability to curb and control corruption and increase service delivery. But these champions are not yet well organized or strong enough to challenge the status quo.

In this context, it is at the local level where champions of reform have the best chance to succeed if they introduce reforms. First, powerful groups with a stake in the status quo are stronger at the national, not the local level. Consequently, local government officials have greater room to maneuver to introduce substantive

governance reforms. Second, direct elections certainly have strengthened government accountability, motivating some mayors and district heads to improve their performance in office.⁶⁰

CSOs can be more effectively organized at the local rather than national level, where they are more able to engage with local authorities and demand greater accountability. As we argue below, USAID could be most effective in leveraging the champions for reform and supporting CSOs at the local level, while engaging with key national-level actors and institutions that play a critical role in advancing—or at least not obstructing—the most dynamic drivers of change in the country.

3.2 KEY ACTORS AND INSTITUTIONS

3.2.1 THE EXECUTIVE

The executive branch at the national level has not been a major source of dynamism or effective leadership for many years. This is partly due to constitutional changes, partly to decentralization laws that empowered districts and municipalities at the expense of the national government and partly to the inertia of an overstaffed but underqualified bureaucracy. It is also due in part to specific qualities of national leaders, particularly the last three presidents, Abdurrahman Wahid, Megawati Sukarnoputri and Susilo Bambang Yudhoyono. Constitutional changes, decentralization laws and the bureaucratic inertias inherited from the past constitute powerful and relatively predictable constraints today. The quality of national leaders, on the other hand, is a less predictable factor because it changes with elections. The presidential elections in 2014 will bring new leaders to the fore.

During the authoritarian Suharto years (1966–1998), labeled the New Order, the executive branch dominated Indonesian political life, at both the central and local levels and across every sector of government. The New Order was both a personalistic regime, guided by Suharto’s will, and a military regime, in which the armed forces were Suharto’s main source of political support against possible opponents and his chief instrument of surveillance within the government and toward social forces outside it.

Despite its high degree of centralization, personalization and military control, the New Order was not a totalitarian regime. Instead, it had broad support from many groups. The principal reason for this support was the regime’s successful promotion of economic growth, which in the late 1960s became a major source of political legitimacy and remained so until 1997. Upon taking power in 1966, Suharto confronted a major economic crisis, including runaway inflation and negative economic growth. He turned to a team of professional economists, led by the University of Indonesia’s Professor Widjojo Nitisastro, for policy guidance, beginning a long partnership that produced a quarter century of economic growth averaging nearly eight percent per year. On the negative side, the New Order was perceived as a time of growing corruption and economic inequality. In addition to its commitment to economic development, the New Order was widely supported from beginning to end for its hostility to communism (of particular importance to Islamic groups) and its strong commitment to national unity (e.g., opposition to separatist movements such as in Aceh and Papua).

Reformasi, which began in 1998 with the resignation of Suharto and his replacement by his vice president, B.J. Habibie, has been an attempt to restore the democracy of the 1950s while avoiding its major pitfalls (i.e., political instability). In the economy, the goal is to restore the economic growth rate of the Suharto period (which at the depths of the East Asian economic crisis in 1998 was a negative 14 percent) while also tackling the major challenges of corruption and inequality. National leaders during the *reformasi* period have also been committed to the goal of national unity (preventing any region from becoming an independent state).

⁶⁰ Of course, as the International Crisis Group reports, direct elections have also emboldened mayors and district heads to defy court rulings and national policy guidelines given the few institutional mechanisms the central government has for securing law enforcement or disciplining local authorities that defy the central government.

The constitutional amendments of 1999-2002 were designed to establish the foundations of a presidential democracy in which the president is vertically accountable to the voters through direct elections and horizontally accountable to the DPR or parliament through shared law-making and appointment powers. The result has been a much weaker presidency than that which characterized the authoritarian New Order. Indeed, something of a consensus has emerged that the president is now excessively constrained, to the point that he is unable to govern effectively.⁶¹ Apologists for President Yudhoyono, who has a reputation for inaction, have deployed this argument. Yet, the president himself seems to be at fault for weak leadership, refraining from taking action in situations when he could have clearly intervened and made a difference.⁶²

Decentralization was one of the major reform initiatives of President Habibie (1998-1999), who responded to demands for democratization at both the national level (holding genuinely democratic elections in 1999 for the first time since 1955) and the local level. The first decentralization laws, granting both significant regulatory authority and financial means to districts and municipalities, were passed in 2002. The district/municipality level was chosen to avoid giving resources to the much larger provinces, in which it was feared that separatist movements could develop. Another law was passed in 2004 limiting the extent of decentralization, and further legislation has now been proposed by the government and considered by the DPR. Legislative elections have been held in the provinces and the district/municipalities on two occasions (2004 and 2009) since decentralization; executive elections for governors, mayors and district heads have been held, on a rolling basis, twice in every province, district and municipality beginning in 2005.

A major consequence of the passing of the decentralization laws was to sharply limit the authority of the central executive, particularly of the Ministry of Home Affairs (MOHA). While adjustments will continue to be made, it seems clear that the ministry will never again hold the powerful position it maintained during the Suharto era. It is also clear that MOHA officials and other central government actors are protagonists in a continuing drama to reestablish a measure of control over provincial and especially district and municipality governments. Many Indonesians, including some of the local officials and NGO actors interviewed for this assessment, believe that MOHA and other central officials are determined to reverse decentralization and return to a highly centralized government à la Suharto. Yet, the current decentralization debate may be more the result of an attempt to find the right central-local balance, and not part of a grand conspiracy to restore the New Order.

Another major limitation on the executive is a bloated, poorly trained, ineffective bureaucracy recruited from an inadequately educated population. The roots of today's ineffectiveness lie in the Dutch colonial period, when very few Indonesians received higher education or bureaucratic training. After independence, the bureaucracy was swollen with revolutionary fighters, most of whom did not have a high enough level of education for the jobs they received. From the beginning, salaries were low, which enabled the government to provide jobs to many more people than would otherwise have been the case. Low salaries encouraged, and to many, justified corruption. By 1965, most civil servants worked, at most, a few hours a day at their formal jobs, while moonlighting in the private or informal sector or engaging in corruption to make ends meet.

The New Order constituted a long period of bureaucratic stability but one in which there was less change than there might have been if Suharto's policies had been different. For the greatest number of civil servants at all levels, low salaries—and the political logic accompanying them—continued, together with the understanding that officials would not be held accountable for the number of hours worked or for integrity in the performance of their duties. There was also only marginal improvement in training of civil servants and in

⁶¹ See, for example, Hanti AR Yuda, *Presidensialisme Setengah Hati: Dari Dilema ke Kompromi* [Half-Hearted Presidentialism: From Dilemma to Compromise], (Jakarta: Gramedia, 2010).

⁶² A recently completed doctoral dissertation by Djayadi Hanan, for example, argues against the conventional wisdom that President Yudhoyono has in fact been a decisive player in legislation and that he and the DPR have collaborated effectively on a number of crucial issues. Djayadi Hanan, *Making Presidentialism Work: Legislative and Executive Interaction in Indonesian Democracy*, (Columbus, Ohio: The Ohio State University Department of Political Science, Ph.D. dissertation, 2012). A similar view on the president's passivity was expressed by Mr. Jimly Asshiddiqie in an interview quoted in the International Crisis Group's report, "Defying the State." 2012c. p. 18.

levels and quality of education in patterns of recruitment to the civil service. Among the top officials, however, the economic development success of the New Order made possible much more extensive and lucrative corruption, almost all of it under the supervision of President Suharto or his most trusted lieutenants. The major, perhaps the only, partial exception to this pattern was the behavior of the professional economists or technocrats under the leadership of Prof. Widjojo Nitisastro, first at BAPPENAS (the National Planning Board), and later at the Ministry of Finance.

These patterns continue to the present, with two significant differences. First, national-level “big fish” corruption is no longer centrally controlled for a single purpose. What the Australian economist Ross McLeod has labeled the economy-wide Suharto “franchise—a system of government designed to redistribute income and wealth from the weak to the strong while maintaining rapid growth,” has disintegrated, “its various component parts now working at cross-purposes rather than in mutually reinforcing fashion. The result has been a significant decline in the security of property rights and, in turn, the continued postponement of a sustained economic rebound.”⁶³ Second, and related, the redistribution of government resources to nearly 500 districts and municipalities, and to a lesser extent 33 provinces, has meant multiplication many times over of the difficulty of exercising central supervision over bureaucratic recruitment, training and performance.

The final factor affecting the quality and performance of the executive is the individual characteristics of political leaders, particularly presidents. As in the United States, the political system and culture in democratic Indonesia expect, indeed demand, strong presidential leadership. Among the post-Suharto presidents, Habibie, even though he was not the product of a democratic election, has been perhaps the most effective. His successes, to be sure achieved during a period of great crisis and therefore great opportunity, include holding a genuinely democratic national election in 1999; achieving decentralization of significant regulatory and financial authority to the districts and municipalities; and enabling the people of East Timor, now Timor-Leste, to become independent, thus removing a major irritant to democratic stability in the rest of the country.

Indonesia’s current President Yudhoyono has a well-earned reputation for not making decisions on important issues of the day, or for making them only at the last moment under great political duress. In this sense, he may be regarded as contributing personally to the weakness of the executive in the democratic period. He is, for example, widely regarded as the biggest obstacle to firmer government action toward intolerant Islamist groups such as the *Front Pembela Islam* (FPI, Islamic Defenders Front). In the economy, he has not acted decisively to deal with the continuing threat from the government’s fuel subsidy, which today threatens, as it has several times during his presidency, to overwhelm the state budget.

More generally, President Yudhoyono has failed to develop, let alone fight for, a comprehensive infrastructural development plan—called for by many domestic and foreign economists—that would lay a more solid foundation for future growth and make the Indonesian economy more competitive with China. According to *Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan* (UKP4, Presidential Working Unit for Supervision and Management of Development) staff interviewed for this assessment, this government unit has not received the full presidential support necessary to effectively coordinate government development programs.

On the other hand, it is hard to call the Yudhoyono government a failure. One early success, though midwived by then Vice President Jusuf Kalla, was the 2005 peace agreement with GAM, ending decades of rebellion in Aceh. As president, Yudhoyono has overseen the conduct of one national election and hundreds of provincial and district/municipality elections. He has provided critical political support, including very recently, to the important corruption-fighting agency KPK. The national police force, under his ultimate control, has one of the world’s best records in fighting Islamist terrorism. On a smaller scale, he has also

⁶³ Ross McLeod, “The Struggle to Regain Effective Government under Democracy in Indonesia,” *Bulletin of Indonesian Economic Studies*, (41:3 2005), p. 367.

played a role in new legislation establishing a social security system and ending discrimination against children born of one Indonesian and one non-Indonesian parent.

Finally, the economic growth rate has improved steadily during his presidency and is now at 6.2 percent, second in the world to China. In addition to maintenance of sound macroeconomic policies (an inheritance from the best of the Suharto years), the sheer political stability provided by a two-term presidency (with each term five years) compared to the brief tenures of his two democratic predecessors probably accounts for some part of that economic success. President Yudhoyono cannot be reelected and no strong potential successor has yet emerged from the large group of likely candidates.

3.2.2 THE SECURITY SERVICES

The security forces, including the army, play only a minimal role in politics today, compared to their extensive previous involvement. The most important actors, as in most democracies, are the police, whose responsibilities include, in addition to normal policing, anti-terrorism investigations and arrests and the suppression of mass violence by police troops. Their successes in the latter two areas have been much greater than in the first.

The New Order was a military regime dominated by the army. Suharto was an army major-general, in command of strategic troops in Jakarta, when on October 1, 1965, six fellow senior army officers were kidnapped and murdered—probably at the direction of the communist party. The regime that Suharto subsequently created, which ruled Indonesia for more than three decades, was based primarily on army support. In return for that support, army officers and institutions were given opportunities for corruption and exercise of personal power not afforded to the other services: the navy, air force and police, which had only limited political power.

At the time Suharto came to power, the army was already the dominant service. It is important to emphasize that this was an institutional pattern of dominance, rather than domination by a specific group of officers, from the beginning to the end of the New Order. Suharto became president because he led the army, the most powerful institution in the political system, at a crucial moment in 1965. But he quickly established his own legitimacy and control as president over other institutions, which he maintained to the end.

Most army officers during much of the New Order accepted this arrangement, but were never entirely happy with the political role that Suharto assigned to them, particularly in connection with the quinquennial national elections. That role included highly partisan support for the campaigns of Golkar (*Golongan Karya*, Functional Groups), the state party, and intervention when called upon by the president in the internal affairs of the other two political parties allowed to exist at the time, *Partai Demokrasi Indonesia* (PDI, Indonesian Democracy Party) and PPP. To a growing number of officers, this demand conflicted with their desire to build a modern, professional army capable of defending the country against foreign adversaries. By the time of Suharto's fall, the army as an institution had already formulated a new civil-military relations doctrine removing itself from domestic affairs.⁶⁴

This doctrine, including explicit separation of the domestic security responsibilities of the police from the foreign defense responsibilities of the army and other armed forces, was included in the 1999-2002 amendments to the Constitution. Today, of its former perquisites, the army retains only its so-called “territorial system,” a hierarchical command structure reaching from the center to the villages. Once a powerful instrument of surveillance, partisan intervention and lucrative source of extra income for lower-ranking officers, the territorial system has become a hollow shell without influence of any kind at any level of

⁶⁴ Since Sukarno came to power in the late 1950s, Dutch-owned enterprises were taken over and given to the military to run. Suharto continued the practice of placing individual officers in charge of state-owned enterprises, mostly retired military officers. Since the downfall of Suharto and during the *reformasi* era, no new state-owned enterprises were created to take care of the military. This is certainly not a controversial issue in Indonesian politics today.

government. The army is no longer involved in politics at the local level. Papua is of course an exception to this general pattern. (See the recent USAID internal report on Papua.)

Since independence, Indonesia has had a single national police force, with police stations in all provincial capitals, municipalities and district towns, and sub-districts, the lowest level to which most national government agencies reach. By international measures, the size of the police force has always been relatively small compared to the national population. One reason for this has been the dominant role long played in domestic security provision by the army, as described above. Now that the police have been constitutionally assigned the predominant role in provision of domestic security, it is probable that their numbers will expand, although this is not yet government policy.

In addition to normal policing, the police have also been given additional responsibilities with regard to fighting terrorism and suppressing collective domestic violence. These responsibilities have been assigned primarily to Special Detachment 88 (Detasemen Khusus 88, Densus 88), a counterterrorism unit within the Mobile Brigade (Brigade Mobil or Brimob) police troops. While Special Detachment 88 was created after the 2002 Bali bombings, Brimob's history dates to the early revolutionary period, when its duties included disarming Japanese soldiers at the end of World War II and protecting the new Indonesian president and vice president. Densus 88 is funded, equipped and trained by the U.S. and Australian governments. Its successes include arrest and/or killing of most of the prominent leaders of *Jemaah Islamiyah* (JI, Islamic Community), the principal Islamist terrorist organization in Indonesia since the fall of Suharto.⁶⁵

The police are widely regarded as one of the most corrupt agencies of the Indonesian government, especially in terms of “little fish” corruption involving the day-to-day interactions of the police with the public. Ordinary Indonesians report that they have to pay bribes to get drivers' licenses, vehicle license plates, or to avoid fines when stopped by the traffic police. Many citizens also avoid reporting crimes to the police, whose own behavior is often seen as criminal. In a recent report, the highly regarded International Crisis Group wrote that “community policing...is not working; the police are too quick to shoot, usually with live ammunition; and little progress has been made toward police accountability.”⁶⁶

Reform of these abuses is a perennial topic of national discussion. The International Crisis Group argues that “In the absence of urgent reforms and mechanisms to address local grievances, public hostility [towards the police] is likely to grow.”⁶⁷ Indeed, while the assessment team was in country, there was mass public outcry against an attempt by the police to sabotage an investigation of police officers for corruption being conducted by KPK, the anti-corruption commission. On this occasion, President Yudhoyono intervened on the side of KPK investigators, which hopefully means that the police officers involved will ultimately be prosecuted if there is sufficient evidence against them.⁶⁸ Despite this sign of progress, no significant champions of reform exist within the police force itself.

3.2.3 THE LEGISLATURE

Since the fall of Suharto, the legislature has emerged as one of the most powerful political players in the country. This contrasts sharply with the Suharto years, when the legislature was a “rubber stamp” of the executive. Together with the empowerment of local governments, the strengthening of the legislature is one of the most important hallmarks of democratization. Aside from balancing the power of the executive, the

⁶⁵ International Crisis Group, “How Indonesian Extremists Regroup,” Asia Report No. 228, (2012a) (available online at www.crisisgroup.org).

⁶⁶ International Crisis Group, “Indonesia: The Deadly Cost of Poor Policing,” Asia Report No. 218, (2012b) (available online at www.crisisgroup.org).

⁶⁷ Ibid.

⁶⁸ *Tempo*, “Dibalik Pidato Presiden [Behind the President's Speech], (21 October 2012), p. 38. *Tempo* is Indonesia's leading newsweekly, and this was the cover story for this issue.

legislature has played an important role—albeit limited—in opening up debates about public issues that would have been unheard of in the past.⁶⁹

Before the 2009 elections, as Hazelia Margaretha reports in a recent publication, people had high expectations for the performance of the legislature, for members elected to the House of Representatives were on average better educated and younger than in previous years.⁷⁰ Yet today, the legislature (along with political parties) continues to be the most distrusted political institution in Indonesia.⁷¹

Indonesia's national legislature, the *Majelis Permusyawaratan Rakyat* (MPR) or the People's Consultative Assembly is composed of the 560-member House of Representatives (DPR) and the 132-member *Dewan Perwakilan Daerah* (DPD, Regional Representatives' Council). The DPR has the primary role of passing legislation. The DPD, representing the 33 provinces in Indonesia, was only established in 2004, with limited functions as a consultative body. The MPR (DPD and DPR in joint session) is only responsible for passing constitutional amendments and conducting presidential impeachments.⁷²

The 560 members of the DPR are elected from party lists in multi-seat districts through a system of proportional representation. The number of seats allocated to each district varies in proportion to the population.⁷³ Until 2009, party lists were closed; citizens chose between different party lists, without any possibility of selecting—or rejecting—particular candidates from the list. The number of seats allocated to each party was calculated according to the percentage of votes obtained by each party, and thus candidates ranked at the top of the list were more likely to secure a seat. The placement of candidates in the list was an internal party affair and a process hidden from public view.

DPD members are elected directly at the provincial level. Each province elects four members to the DPD. Until 2009, candidates were elected as independent individuals; they could not be affiliated with any political party.

Before the elections of 2009, the DPR passed a package of electoral reforms. One of the most significant was the opening of party lists in legislative elections. The electoral reform was passed by parliament in 2008, but it included a quota provision that allowed parties to maintain control of the election of candidates by requiring that elected candidates obtain at least 30 percent of the vote. As we discuss below, this provision was challenged by civil society and taken to the Constitutional Court, which ruled that the quota provision was unconstitutional.

In the 2009 elections, citizens for the first time had the option to vote for individual candidates or for a party.⁷⁴ The total number of seats allocated to each party is calculated by a system of proportional representation. Candidates with the highest number of votes obtain a seat in DPR, regardless of their ranking within the party list. The objective behind this reform was to increase transparency and promote greater accountability of parties by strengthening the links between candidates and their constituencies. As we discuss below, the results of these reforms have been limited.

⁶⁹ For example, parliament opened the investigation after the mud-flow disaster in Sidoarjo in East Java. This disaster was associated with the drilling activities of Lapindo, a company owned by Aburizal Bakrie. Many of the details of the case came through DPR investigations. See Stephen Sherlock, "The Parliament in Indonesia's Decade of Democracy: People's Forum or Chamber of Cronies?," in Edward Aspinall and Marcus Mietzner, eds. *Problems of Democratization in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2010). p. 13.

⁷⁰ Hazelia Margaretha, "Indonesia's National Parliament: Assessing the DPR's performance." (March, 17, 2011). In <http://www.eastasiaforum.org/2011/03/17/indonesias-national-parliament-assessing-the-dprs-performance/>.

⁷¹ Results obtained by LSI, which conducted its most recent public opinion survey in 2011.

⁷² Bruce Vaughn, "Indonesia: Domestic Politics, Strategic Dynamics, and U.S. Interests." (Congressional Research Service, January 31, 2011).

⁷³ Sherlock, 2010, p. 3.

⁷⁴ According to the USAID electoral assessment referred to above, the closeness of this reform to the legislative elections of 2009 in fact generated a lot of confusion both among the electorate and electoral officials. This in large part explains many of the electoral problems encountered by electoral authorities. USAID, 2012b, p. 2.

The electoral reforms of 2009 also allowed political parties to nominate candidates for the DPD. As a result, today's DPD membership is mixed; some members are independent and others are affiliated with political parties. According to one DPD member, the quality of representation decreased after parties were allowed to participate in DPD elections. Before 2009, candidates elected to DPD were independent; they were neutral. They effectively represented the province. Now, party members who have seats in DPD represent their parties, not their provinces.⁷⁵ In April 2008, the parliament established a quota of 30 percent for women's participation as candidates and board members in all political parties. According to a study on the impact of this quota on women's representation, the 2009 legislative elections increased female representation by 64 percent. The percentage of women's representation in DPR increased to 18 percent, surpassing the level of many of the world's Asian and Muslim majority electoral democracies.⁷⁶ Yet, as this study argues, the increase in women's representation is not only due to the quota system. In the author's words, "If the parties had simply complied with the law 28 female legislators would have been elected, yet 102 were actually elected in 2009."⁷⁷ The reason, she argues, is that women actually were attractive as leaders, and citizens voted for them in larger numbers than expected.⁷⁸ At the regional and local levels, however, many challenges still remain, for women are not being offered the same opportunities as at the national level.

Although it is too early to assess the real impact of the 2009 electoral reforms, it is already evident that the open list system did not necessarily increase the accountability of DPR members toward their constituencies. Even when directly elected, DPR members have not increased their ties to their constituencies nor have they made greater efforts to establish constituent offices at the district level. In fact, a recent survey conducted by the USAID-funded "Program *Representas?*" revealed that only an extremely low percentage of citizens can actually identify their MPs. Moreover, as the Freedom House report argues, the open list system actually increased the cost of political campaigns,⁷⁹ a factor that empowered both the individual candidates and their sponsors, vis-à-vis their own parties. Today, parties have fewer mechanisms to control the selection of their candidates and to discipline them once they are elected.

The main problem, of course, is not the method of electing legislators, but the system of political party finance. MPs are accountable first and foremost to those who fund their campaigns, not to the citizens who elect them. Indeed, many people interviewed for this assessment believe that the first link in the corrupt chain is political party finance. Candidates are responsible for funding their campaigns with private resources and no limits exist on campaign expenditures. With few controls on private funding sources, candidates become heavily attached to those who fund them and once in power, reward them substantially. Government office becomes a mechanism to reward special interests and promote personal business deals. There needs to be mechanisms of transparency and accountability for elected officials to their constituents regarding the link between campaign promises and actual subsequent strategic planning and budgeting.

For these reasons, obtaining a seat in the DPR is not necessarily considered prestigious, and most MPs do not have ambitions to stay in the legislature for long periods and build legislative careers. For the most part, legislators are there to serve particular interests and maybe escalate on the political ladder to more prestigious (or profitable) political positions. This is why some candidates are said to pay exorbitant amounts of money to get a party's nomination.

⁷⁵ DPD leaders have introduced a constitutional reform proposal to increase their institution's power and authority, which would thereby give regions more power vis-à-vis the central state, and balance the authority of the DPR. This is not considered likely to be adopted, however.

⁷⁶ Sarah Shair-Rosenfeld, "The alternative incumbency effect: Electing women legislators in Indonesia." *Electoral Studies*, 31, (2012).

⁷⁷ Ibid, p. 576.

⁷⁸ "Of the 102 women who won seats, 6 more than 85 percent were listed by their parties in positions #1 and 2, above the placement mandate requirement. Because voters tended to choose in relative list order, despite the ability to select any candidate from any party list in their district, the overwhelming majority of seats went to candidates listed in the top two positions on their list." Ibid, p. 580.

⁷⁹ Freedom House, 2012.

A good indicator of the absence of a parliamentary career is the high rate of turnover in parliamentary elections, where more than 70 percent of MPs are not reelected. Citizens tend to vote MPs out because they consider MPs performed poorly during their term and because, in general, MPs maintain weak relationships with their constituencies. Citizens distrust MPs and believe they are highly corrupt. MPs also face fierce competition inside and outside their parties. As a result, every five years, most of DPR is filled with new and inexperienced candidates.

Whether or not this high turnover trend in further elections will decrease remains to be seen. What is clear is that changing the electoral law is not enough; without a substantial change in the way parties and candidates are funded, the incentives for greater accountability and representation of parliament remain limited.

The problem of political accountability also stems from flaws in the legislative branch's institutional design. The DPD, the upper chamber which should function as a senate, has no power. It only serves as a consultative body, but it does not check and balance the power of DPR. DPR's secretary general, on the other hand, is nominated by the executive. This is an institutional legacy from the Suharto years, when the legislative branch was subordinate to the president. While this subordination has ended, the "intrusion" of the executive in the legislative branch is problematic, for the secretary general still has power over the administrative affairs of parliament. Moreover, the Constitution does not explicitly recognize "representation" as one of the core functions of the legislative branch. The Constitution only mentions oversight of the executive, law making and passing the budget as the legislative's core functions. Finally, parliamentary procedures establish that decisions are reached by consensus, not by majority vote. Legislators do not cast their votes individually and citizens therefore cannot track the records of individual legislators. Although some committees have begun to invite public hearings; for the most part, committees deliberate in closed meetings which are not recorded.⁸⁰

Political parties and legislatures are typically distrusted all over the world. The difference in Indonesia, however, is that parties and MPs have fewer incentives to become more accountable to their constituencies and become more responsive to their needs.

An additional problem is the extremely high number of political parties with seats in the DPR, not to mention those that registered but failed to obtain a seat. Compared to the Suharto years, the high number of parties might seem like a sign of healthy competition, but in fact, such an elevated number of parties is quite dysfunctional for a good system of political representation. With the partial exception of the Islamist parties, political parties in Indonesia do not have strong programmatic and/or ideological positions. They are electoral machines (some of them not well organized) to elect candidates. Parties do not effectively articulate and aggregate interests; citizens cannot identify with a political party because they do not have strong principles on public issues. Moreover, parties rely on clientelistic and patronage networks to mobilize citizens during elections. After the election is over, the ties to the constituencies wane. Finally, with so many parties, negotiation and policy deliberation in DPR becomes cumbersome, and often, as we heard in several interviews, votes in parliament are given in exchange for bribes.⁸¹ Although some legislative committees have taken a more proactive role in inviting the public and releasing information on their deliberations, for the most part, parliamentary debate and deliberation is conducted outside the public view.

⁸⁰ Sherlock, 2010, p. 16.

⁸¹ According to the Freedom House Report, "a parliamentary internal performance-enhancement team concluded in a 2010 report that corruption was rampant during the budget process." See "Indonesian Member of Parliament Speaks Out Against Corruption," United Nations Office on Drugs and Crime, September 2, 2010, <http://www.unodc.org/eastasiaandpacific/en/2010/09/fifth-talk-series/story.html>. Cited in Freedom House report. 2012.

In April 2012, parliament passed the Legislative Election Law that raised the election threshold to 3.5 percent compared to 2.5 percent in the 2009 law. This new threshold is a move in the right direction, although some doubt whether it is high enough to effectively reduce the number of parties with seats in the DPR.⁸²

The high level of turnover and absence of a legislative career have negative effects on the professionalization of parliament. Parliament does not have a good research unit to inform policymaking. This is particularly problematic with regard to the budget; there is not a well-staffed unit within parliament in charge of budget analysis. The size and quality of staff is limited, and there are no professional drafting teams. While every draft bill needs to be backed by an academic paper, these papers tend to be too formal, and MPs generally do not consult them.

At the local and provincial levels, problems including lack of accountability, weak professionalization and corruption are predominant, and women are still largely unrepresented. While parties are obliged to nominate at least 30 percent female candidates, they usually place them at the bottom of the list, a position that reduces their chances to get elected.⁸³

3.2.4 THE JUDICIARY AND LEGAL PROFESSIONALS

The Indonesian Constitution follows the Western model which recognizes the judiciary as a separate and equal branch of government. Since the transition to democracy, political leaders have substantially amended the 1945 constitution four times between 1999 and 2002. Pursuant to Article 24 of the Constitution, the Indonesian judicial system comprises several types of courts. Indonesia has a civil law system, based on the codes inherited from the Dutch.

The *Mahkamah Agung*, the Supreme Court, has authority over the high courts and lower courts in the country. A reform in 2004 gave the Supreme Court control over the judiciary's administration, personnel and finance. The reform also instituted the "one roof" system which brought the general, religious, military and administrative courts under the Supreme Court's administrative authority. It also controls and supervises special courts, which have been more recently created, such as the Commercial Court, Human Rights Court, Corruption Court, Children's Court, Fishery Court and Industrial Relations Court.⁸⁴ In 2003, the parliament established the Constitutional Court as a separate institution, independent from the Supreme Court. The Constitutional Court is responsible for hearing matters directly related to the interpretation of the Constitution and laws created by the DPR. For example, it has been involved in disputes among different government institutions, and recently, the resolution of electoral disputes.

In theory, the judiciary is independent, both institutionally and functionally. The judicial body is supposed to be free from intervention from other parties outside the judicial power and judges are supposed to make rulings based on facts and legal basis, and not to be influenced and/or pressured by external interests. In practice, however, the judiciary is often not independent; financially, it is strictly regulated by the Ministry of Finance, so it does not have budgetary independence. Functionally, the judiciary is also not considered to be independent from external influences; the nomination of Supreme Court judges is heavily politicized and the practice of constantly moving judges around the country militates against their specialization and discourages lawyers from joining the public sector in the first place. Judges in general are regarded as corrupt by many citizens.

The Supreme Court. There are 50 justices on the Supreme Court, who are elected by the DPR from a list of candidates submitted by the Judicial Commission. The chief justice of the Supreme Court is elected internally by the Supreme Court judges. The problem with the nomination process is that the DPR is not presented

⁸² See Freedom House. 2012.

⁸³ While in principle the position in the list is now irrelevant, for the candidate who wins the most votes gets elected; however, when candidates are posted at the bottom of the list, citizens tend not to vote for them.

⁸⁴ Supreme Court of Indonesia. "Blueprint for Justice Reform, 2010-2035." p. 4.

with one candidate who has to be vetted and then accepted or rejected. Rather, the Judicial Commission presents several candidates to the DPR. The selection mechanism then becomes a matter of negotiation between the different political parties represented in the DPR. According to a prominent lawyer interviewed for this assessment, the result is that legislators typically select the worst, not the best, candidate. That is, they select the candidates they think will be most likely to defend special interests in the courts. The process of selection, like most legislative decision making, is not open to the public. Citizens have no real mechanism to scrutinize the candidates' record and voice concerns about candidates being nominated.

The Supreme Court suffers from extreme case overload, poor administration and a reputation for corruption. According to the Supreme Court, the court received 7,468 cases in 2005 and this number increased to 11,338 in 2008. These cases range from very simple to extremely complex.⁸⁵ The problem is that almost all the cases (80 percent) reviewed by appeals courts are brought to the Supreme Court. Managing this high number of cases becomes even more problematic because the Supreme Court does not have a chamber system, where cases are reviewed by specialized justices. The result is that Supreme Court justices are asked to review all types of cases without necessarily having the expertise required for particular cases. This not only generates backlog but also reduces the quality and consistency of rulings.

The Supreme Court is responsible for administering the country's court system, which comprises more than 1,000 separate court units at the provincial and district/municipal levels. According to the 2009 Assessment, the court has resisted attempts to increase the transparency and accountability of the court's financial transactions. For example, "the State Audit Board sought to audit the funds obtained from fees collected from plaintiffs, but was not permitted to do so...[there is no accountability for these off-budget funds]."⁸⁶

Since 2010, the Supreme Court has made some progress in reducing its backlog through the adoption of improved case management systems. The court has also made progress in the way it communicates with the public and provides information about its activities. But, as we explain below, these improvements are not sufficient and may not be the most necessary ones to address the core problems of lack of judicial independence.

Lower courts do not suffer from the same problem of case overload as the Supreme Court, but courts in Jakarta receive disproportionately more cases than courts in other provinces.⁸⁷ The main problem in the lower courts is that judges have weak technical capacities to perform their functions; court fees are sometimes too high for poor people; and overall, judges are highly distrusted and regarded as corrupt by the general public.⁸⁸

Lower court judges are selected by the **Judicial Commission**, an institution established in 2005. Officials at the Judicial Commission are appointed by the executive and DPR. The commission's main responsibilities are to select judges for the lower courts and supervise them. In 2009, the Judicial Commission formulated a Code of Ethics for judges, a document that was written in consultation with the Supreme Court and *Ikatan Hakim Indonesia* (IKAHI), the judges' association.

The main problem with the selection of judges for lower courts is that the Judicial Commission has difficulties in attracting well-qualified lawyers to apply for the position of judge. Since the justice system in general is distrusted, and judges in particular are believed to be dishonest, not many people want to become judges. Further, judges are constantly moved around the country, a factor that discourages lawyers to join the public sector. One individual interviewed claimed those who apply for the job "tend to come from the worst law schools in the country." As a consequence, the capacity of judges is weak. Judges come from law schools that teach them to memorize, but they are not typically good at legal reasoning. Generalized standards for

⁸⁵ Supreme Court of Indonesia, p. 8.

⁸⁶ USAID, 2009, p. 10.

⁸⁷ Supreme Court of Indonesia, p. 8.

⁸⁸ Ibid.

certification of lawyers do not exist, a matter that makes selection of judges even more difficult. Finally, and to complicate matters, the Judicial Commission, which is in charge of supervising and disciplining judges, has limited powers to sanction judges. In 2008, for example, the Judicial Commission received 1,556 reports of misconduct of judges. The commission investigated 212 cases and referred 27 cases to the Supreme Court. But the Supreme Court did not take action on any of these cases.⁸⁹ More recently, the Supreme Court has been trying to limit the committee's oversight functions even more.

Judges' perceived lack of integrity is perhaps one of the most important reasons for the generalized sense that the justice system is corrupt. According to Indonesian Corruption Watch (ICW), one of the most respected anti-corruption organizations in the country, career judges acquit in around 50 percent of corruption cases.⁹⁰

Officials at the Supreme Court recognize the low standing of the judiciary in citizens' perceptions. According to the new Blueprint for Justice Reform (2010-2035), the Supreme Court is committed to creating a court system of "excellence" that imparts justice independently, effectively and fairly. It is also committed to the values of integrity, honesty, transparency and accountability. The blueprint contemplates reforms in case management, organizational structure, human resources, asset management, information technology and internal and external controls.⁹¹ To the extent that the reforms are effectively implemented, the court may improve its performance and citizens might increase their trust in the justice system.

The problems, however, are manifold and complex. The blueprint, for example, does not discuss the method of selection of Supreme Court justices—a process that many allege is the central weakness of the system. Moreover, this blueprint was based on an earlier "Blueprint for Reform 2003." Yet, as the document recognizes, "only 30 percent of the activities and programs planned in the earlier blueprint were actually implemented."⁹² This new blueprint seems unlikely to enjoy better prospects of implementation. According to most interviewees for this assessment, there are few champions of reform in the Supreme Court. Having a document that acknowledges the weakness of the judiciary and lays out a plan for improvement is good, but if the political will to implement the plan is lacking, the risk of inaction vis-à-vis reform is high.

The **Attorney General's Office** is one of the most distrusted institutions in Indonesia. The AGO is responsible for bringing civil and criminal cases to the courts on behalf of the state. According to a recent opinion poll conducted by LSI in 2011, the AGO is regarded as the third most corrupt institution in the country, after political parties and the DPR.⁹³ A combination of incompetence, pervasive corruption and what Indonesians call the bureaucratic "mindset" inherited from the authoritarian period, contribute to the negative perception. Decisions on whether or not to investigate and prosecute cases are allegedly influenced by money. One of the consequences is that the AGO ends up investigating and prosecuting petty crimes, while the big criminals are rarely brought to justice.

The AGO suffers from similar recruitment problems as those of the courts; good and honest lawyers do not want to become prosecutors because the system is largely discredited. Moreover, according to one interviewee, "prosecutors and investigators are paid dismal salaries," not sufficient to motivate them or incentivize excellence. While this official openly challenged the proposition that corruption is an endemic problem in the AGO, he recognized that the "Attorney General's Office has a bad reputation and is generally

⁸⁹ Saich et al., 2010. p. 93.

⁹⁰ ICW report, cited in Simon Butt's "Anti-Corruption Reform in Indonesia. An Obituary?" in *Bulletin of Indonesian Economic Studies*, (Vol. 47, No. 3, 2011), p. 383.

⁹¹ As part of these reforms, the president issued a regulation in November 2012 increasing the salaries of judges 300 percent. These increases will take effect in January 2013. A similar increase is expected for Supreme Court justices soon. However, raising salaries without also reducing the opportunities for engaging in corrupt behavior and increasing the risks is an insufficient and ineffective anti-corruption measure. See Rafael di Tella and Ernesto Schargrodsky, "The Role of Wages and Auditing during a crackdown on Corruption in the City of Buenos Aires." *Journal of Law and Economics*, vol. XLVI (April 2003).

⁹² Supreme Court of Indonesia, p. 5.

⁹³ LSI, Op Cit.

negatively perceived by most citizens.” Yet, according to him, this problem was more related to a poor communications and public relations policy than to lack of integrity of its personnel.

Aside from the question of integrity, the AGO faces many other difficult challenges. Any institution with a staff of more than 22,000 public officials is difficult to reform, particularly when the structure of incentives still militates against change: low salaries, absence of performance standards, weak internal controls and few rewards for efficiency and/or integrity. Furthermore, in Indonesia, the AGO and police do not work in close coordination. Cases are said to go back and forth from one institution to the other, a process that inevitably delays prosecutions, often intentionally.

The Constitutional Court, established in 2003, is one of the institutions with some credibility in Indonesia. This court consists of nine judges; three are nominated by DPR, three by the executive and three by the Supreme Court. The Constitutional Court’s jurisdiction is to conduct judicial review, thus assuring that the majority rule in parliament does not violate the Constitution. The court also resolves disputes among different government institutions, and recently, was given the responsibility to resolve electoral disputes.

The Constitutional Court is the first and final instance for matters under its jurisdiction. Citizens can bring cases directly to the Constitutional Court, and its rulings are binding; there is no possibility of appeal. The court has played a critical role in ensuring commitment to constitutional democracy and is one of the key institutions needed for guaranteeing the rule of law.

For example, in 2009, the Constitutional Court declared a provision of the 2008 electoral law unconstitutional, opening a path for the implementation of an open-list proportional representation system in the 2009 parliamentary elections. That case was brought by a coalition of citizen groups that objected to a provision in the law that established a quota of 30 percent of the vote for candidates to be eligible for a seat in parliament. This was an attempt by the parties to control the candidate selection process, for if fewer candidates passed the threshold of 30 percent in a particular district, the party could fill the seats allocated to that party from the party list. The Constitutional Court struck down the 30 percent requirement, arguing that this quota was inconsistent with the open-list proportional representation system established in the new electoral law.⁹⁴ Similarly, in 2012, the Constitutional Court made an important ruling that opened the way for a more vigorous KPK oversight of regional governments.

The Constitutional Court has gained legitimacy and credibility among the public and its focus on transparency and ethics can serve as a model for other courts in the country. Yet some challenges remain. For all its legitimacy, some court decisions are not enforced by the appropriate authorities. For example, in July 2010, the Constitutional Court disqualified the winner of the election for district head in West Kotawaringin district, Central Kalimantan province, on vote-buying allegations, ruling that the defeated incumbent should get a second term. The local district council, however, defied the ruling and refused to comply with the court’s decision. As the International Crisis Group argues, “more than two years later, the *bupati* (district head) who was awarded the victory by the court still cannot govern because of local resistance.... The problem is that a clear policy is missing on how the rulings should be enforced or an obvious penalty for failing to comply.”⁹⁵ The problem is also that in this and in similar cases, the president has refused to take a more assertive position, declining to use his powers to enforce court decisions.⁹⁶ Clearly, without a strong commitment at the top to guarantee the rule of law, the Constitutional Court, for all its merits, is limited.

The **KPK**, or the Corruption Eradication Commission, was established in 2003 with a mandate and strong powers to investigate and prosecute corruption cases and monitor the behavior of public officials throughout

⁹⁴ USAID, 2012b, p.2.

⁹⁵ International Crisis Group, 2012c, p. 1.

⁹⁶ According to Achmad Sukarsono of the International Crisis Group, the president is interested in avoiding conflict at all costs and prefers to let conflicts “cool off” rather than confront them. This hands-off attitude corresponds to his desire to guarantee a smooth presidency and continue to be perceived by the international community as a good, non-combative leader. Interview, Jakarta, October 6, 2012.

the Indonesian state.⁹⁷ While the KPK's vision is too ambitious, namely, eradicating corruption,⁹⁸ the commission has been effective in prosecuting high-level corruption cases, sometimes involving top government officials linked to the president. Like many of the new agencies created in Indonesia, KPK's mandate duplicates the responsibilities of the police and the AGO, a condition that generates turf battles between these entities, especially since the latter are also besieged by corrupt practices.

The KPK is officially responsible for five different tasks: 1) coordinating law enforcement agencies, 2) supervising the work of other agencies in charge of combatting corruption, 3) investigating and prosecuting cases of corruption, 4) preventing corruption through public education campaigns, and 5) monitoring how the government is advancing in controlling corruption.⁹⁹ By far their most prominent task is in the field of investigation and prosecution of corruption cases. Coordination, supervision of other agencies and monitoring of the progress of government institutions has proven to be difficult, especially considering that most of the institutions the KPK is supposed to coordinate, supervise and monitor resist KPK's investigations. On the prevention front, however, most efforts have focused on civic education campaigns. Although an evaluation of the impact of these campaigns has not been conducted, the effectiveness of these campaigns is questionable because as argued before in this report, corruption is driven mostly by incentives, rather than by lack of awareness or insufficient education about the illegal or immoral nature of corruption.

The KPK receives complaints and conducts its own investigations. With only five commissioners (selected by a commission of representatives of different government offices but closely monitored by different anti-corruption organizations)¹⁰⁰ and a limited budget (which needs to be approved every year by the DPR), the KPK needs to select its cases carefully.¹⁰¹ Although the KPK has plans to open branches in five regions, until now, all its operations are based in Jakarta.¹⁰² The KPK's prosecutors and investigators are seconded from the police and from the AGO through a competitive process.¹⁰³

According to one of KPK's commissioners, the commission has a stellar record of a 100 percent conviction rate in cases they decide to prosecute. One of these cases involved Aulia Pohan, a member of President Susilo Bambang Yudhoyono's extended family.¹⁰⁴ The KPK has also convicted 30 MPs and many other high-level officials.¹⁰⁵

⁹⁷ According to Simon Butt, KPK's investigators have more powers than police officers, such as wiretapping without a court order. See Butt, *Op Cit.*, p. 383.

⁹⁸ Corruption cannot realistically be "eradicated;" it can be controlled and mitigated. No country is totally free from corrupt officials.

⁹⁹ These responsibilities are spelled out in Article 6 of Law 30, 2002. Interview with Mr. Bambang Widjayanto, KPK commissioner, Jakarta, October 3, 2012.

¹⁰⁰ Setiyono and McLeod, 2010, p. 358.

¹⁰¹ As Simon Butt explains in his article, this responsibility to select cases to prosecute is currently under fire, as DPR is trying to restrict the KPK's ability to choose which cases it decides to prosecute. See Butt, 2011, p. 381.

¹⁰² The DPR has not yet approved the budget to expand the KPK to these regions.

¹⁰³ Even when both the police and the AGO are generally regarded as corrupt, officials seconded to work at the KPK have acted with integrity. See Butt, 2011. This only proves that organizational incentives are drivers of corrupt practices; faced with the right incentives, even corrupt-prone individuals behave with greater integrity.

¹⁰⁴ Former Deputy Governor of Bank Indonesia Aulia Pohan, father-in-law of the president's oldest son, was sentenced to four years and six months in jail by a panel of judges in the Criminal Corruption Court for embezzling Rp 100 billion in 2003 from the Indonesian Bank Development Foundation. Antara, 17 June, 2009.

¹⁰⁵ The KPK was initially criticized for investigating and prosecuting minor corruption cases and not going after the big fish. But KPK's record has been quite impressive. Criticisms against KPK's initial performance seem unwarranted. See <http://www.article2.org/mainfile.php/0901/367/>. Among the corruption cases handled by the KPK from 2004 to 2009 were a number of high-ranking officials; some examples include 17 MPs (this number has now increased to 30, according to one commissioner interviewed for this report), five ministers or heads at the ministerial level, five provincial governors, 18 mayors and heads of regents or districts, one governor of the central bank and four deputy governors, three ambassadors, several senior prosecutors and a high-ranked private sector executive involved in corruption in the public sector.

The willingness and determination of the KPK to prosecute high-profile cases has earned this institution unparalleled legitimacy and credibility among the general public. A person interviewed for this assessment referred to the KPK as “the Indonesian people’s prince,” alluding to the popularity of this institution and the readiness of civil society to defend it as it has come increasingly under attack from powerful individuals within the power structure who feel threatened—most notably in the DPR, police, AGO and President’s Office.

In 2009, the KPK’s investigation and prosecution of a high-level police official accused of bribery set off a fight between the KPK and police, popularly known as the fight between a “gecko and a crocodile.” In retaliation against the KPK, the police arrested two senior KPK officials on false charges. This set off a spontaneous citizen reaction—the geckos—who used social media to mobilize in support of the KPK. According to the Ash Center Report, “more than a million users of the social networking site Facebook joined an on-line protest group.”¹⁰⁶ The conflict was finally resolved when the charges against the KPK were dropped and several high-ranking police officials and prosecutors were forced to resign.

On October 2012, the second chapter of this episode was relived again, when the KPK investigated a high-level police official in a bribery case involving the procurement of driver simulator machines. The police wanted to obstruct this investigation at all costs, alleging that they were responsible for investigating this case. After a strong popular mobilization on Twitter and Facebook in support of the KPK, the president finally broke the impasse in favor of the KPK, which was allowed to proceed with the investigation. But many people interviewed for this assessment believed that while the KPK won this battle, it has not really won the war against the police. The latter would require the president’s willingness to remove the head of the national police, a move he is still not willing to take.

Without a doubt, the KPK has played a critical role in strengthening the rule of law in Indonesia. The ability of a single institution to go against the political establishment, however, is limited. For one thing, the KPK has limited resources and personnel, and its budget is constantly contested in the DPR. More importantly, KPK’s punitive approach, while important, is not sufficient to alter the structure of incentives that motivate corruption in the first place.

3.2.5 LOCAL GOVERNMENT

No aspect of the Indonesian political system has been transformed more thoroughly during the democratic transition than local government, especially at the district (*kabupaten*) and municipality (*kota*) levels. For the foreseeable future, districts and municipalities will be among the most important, if not the most important, sites of democratic decision making and governmental provision of public services. The role of provinces (*provinsi*), the intermediate level between districts and municipalities and the central government, has been much smaller but may become more prominent in the near future if parliament and the president pass new laws currently under consideration regulating regional government.¹⁰⁷

At the same time, government and politics at the local level suffer from all of the deficiencies described in other sections of this assessment. Like their counterparts in Jakarta, local bureaucracies are overstaffed and underqualified, corruption is alleged to be rampant, legislators are unresponsive to their constituents and political parties and CSOs are weak to nonexistent. On average, the situation is perhaps worse in the provinces than at the center and still worse in the districts and municipalities, not to mention the administrative levels further down.

¹⁰⁶ Saich et al., 2010, p. 93.

¹⁰⁷ As described in the section on the executive, the division of powers and responsibilities among the center, province and district/municipality levels may change in the near future. One of the main questions remaining to be resolved is the role of the provinces and how the provinces will relate to the central and municipal/district levels.

Nonetheless, there are obvious differences in quality of governmental performance, with some provinces, districts and municipalities performing at a relatively high level. Some of this difference is undoubtedly attributable to variations in the socioeconomic level of the region, as the assessment team witnessed in visiting Surabaya, the dynamic capital of prosperous East Java, and Kupang, the capital of West Timor, one of Indonesia's poorest provinces. But some of it is probably due to effective local leadership, as has been captured in a fine recent article by Christian von Luebke.¹⁰⁸

The initial statutes relevant to decentralization are Laws No. 22/1999 and 25/1999, proposed by transitional President Habibie, which devolved massive legislative and executive authority to the districts and municipalities. Moreover, after the constitutional reforms of 1999-2002, only foreign policy, defense (including both the military and the police), monetary policy, the administration of religious affairs and the rule of law (prosecutors and courts) remain the exclusive authority of the central government. Some of the most important challenges at the local level are in the areas of education (all public schools are now under the control of district and municipality governments), health care (an important focus is the hundreds of *puskesmas*, public health centers, created but inadequately staffed, funded, and supplied with medicines by the Suharto government), reform of local tax systems (to avoid excessive regulatory burdens on local businesses), and improving the quality of recruitment and training of local civil servants. Executive capacity building across the several substantive areas mentioned above is an important need, as is attention to the capacity of local legislators to participate in lawmaking and oversight, and to the role of CSOs as watchdogs to increase transparency of the policy process.

The original decentralization statutes were subsequently modified by Laws No. 32/2004 and 33/2004, passed during Megawati Sukarnoputri's presidency. Under these laws, 26 percent of the state budget is allotted in the form of block grants (*Dana Alokasi Umum*) to the provinces, districts and municipalities. Governmental Regulation (*Peraturan Pemerintah*) No. 55/2005 further specifies that 90 percent of that 26 percent is allocated to the districts and municipalities, while only 10 percent is spent by provincial governments.

Beginning in 1999, democratic legislatures at the district and municipality levels have been elected on three occasions—1999, 2004 and 2009—in conjunction with the national election for parliament, a pattern begun in the first democratic elections in 1955. In addition, governors, district heads and mayors have been directly elected twice in all 33 provinces and in nearly 500 districts and municipalities.

Historically, Indonesians are familiar with and supportive of the district and municipality as important sites of democratic government. District, municipality and provincial legislatures were first elected throughout the country in 1955, coterminous with the one national election for parliament during Indonesia's first democratic period (1949-1959). The district and municipality heads were indirectly elected by the legislatures. Below the district are purely administrative sub-districts (*kecamatan*). Below the sub-districts are several lower-level units, some of whose heads are elected, some appointed.

During Suharto's New Order (1966-1998), elections were held six times, at roughly five-year intervals, between 1971 and 1997. As in 1955, legislative elections were held simultaneously for the national parliament and provincial, district and municipality legislatures. But these elections were not democratic; rather they were designed to demonstrate the government's legitimacy to international audiences and potential domestic opponents. In all but the first of these elections, three parties were allowed to contest for legislative seats: the government's own Golkar (Functional Groups), PDI (Indonesian Democracy Party) and PPP (United Development Party).

¹⁰⁸ Christian von Luebke, "The Political Economy of Local Governance: Findings from an Indonesian Field Study," *Bulletin of Indonesian Economic Studies* 45:2 (2009), pp. 201-230.

All New Order elections were heavily managed by the government to ensure that Golkar won at least 60 percent of the vote, with the remaining 40 percent divided between PDI and PPP.¹⁰⁹ Most Indonesians believe that the New Order elections were not democratic. Nonetheless, the New Order created a formal framework, with regular elections and party competition that constituted a simulacrum of democracy easily converted after 1998 to the genuine article, at both the national and local levels. To most citizens, the district and municipality were already understood to be the most important level of government geographically closest to them. They were also accustomed to the idea of a division between a legislative branch making laws and an executive branch both implementing laws and providing leadership in policy formulation. After decades of district and municipality executives being indirectly elected by the legislatures (actually a mask during the New Order for MOHA appointment behind the scenes) they were also eager to directly elect their *bupati* (district head) or *walikota* (mayor).

Most Indonesians also appear to have eagerly accepted the devolution of the lion's share of authority to the districts and municipalities rather than to the provinces, whose governments are less accessible to ordinary citizens. Throughout the New Order, citizens had grown increasingly restive, even hostile, toward the extreme centralization of the government. Central government officials were aware of this opposition and debated possible changes starting in the late 1980s. The Habibie government was the first to act, however, almost certainly because the new president was looking for popular support before the first post-New Order democratic election, held in 1999.

Though denied by Habibie, most observers believe that the decision to decentralize to the districts and municipalities instead of the provinces was designed to minimize the possibility of secessionism. Though secessionist movements have not been a significant problem since the 1950s, except in Aceh and Papua, such movements are at least imaginable at the provincial level. There is virtually no possibility, however, of districts and municipalities attempting to secede from the Indonesian republic.

Decentralization, at both the provincial and district/municipality levels, appears to be very popular today, because it does offer the prospect of government that is both accountable and close to the people. Local officials, journalists, party politicians, university intellectuals and NGO activists interviewed by the assessment team praised the new arrangements. Their support was the more convincing because most had directly experienced the New Order and could make direct comparisons with that highly centralized, and in their view, much less responsive government. In Probolinggo, for example, members of the assessment team witnessed a local government radio show, to which citizens call in complaints and the mayor's office keeps a record of official responses and resolutions to the problems raised. According to a staff member, the program was started early in the mayor's first term as part of his reelection campaign.

In September, just before the assessment team began its work, the benefits of decentralization were also visible in the Jakarta gubernatorial election. Combining strong support from the middle class with appeals to the working class, challengers Joko Widodo and his running mate, Basuki Tjahaja Purnama, soundly defeated a well-financed, establishment-supported incumbent. Joko Widodo, popularly called Jokowi, is a successful businessman and was the highly regarded mayor of the small city of Surakarta in Central Java before running for governor of Jakarta. He promised a hands-on government to improve public services and tackle some of Jakarta's most pressing public transportation and infrastructure problems. Equally remarkable, running mate Basuki (called Ahok) is a Sino-Indonesian Christian in a heavily Muslim city.¹¹⁰

¹⁰⁹ However, except in more remote regions outside Java, ballot boxes were rarely stuffed. Instead, pressure was applied more subtly and behind the scenes, for example, by territorial army commanders assigning Golkar vote quotas to village and hamlet officials in their area. If quotas were not met, local officials might be removed; roads, schools, markets and health centers not built; and so on. Local PDI and PPP, but not Golkar, leaders and candidates were also restricted in their campaigning and frequently removed from office if they displeased the territorial commander.

¹¹⁰ *Tempo*, 30 September 2012, cover story.

Another sign of decentralization's popularity is the annual competition, now in its eleventh year, conducted by JPIP, whose current board members were interviewed in Surabaya by the assessment team. District and municipality officials in East Java province are awarded prizes for performance in such areas as provision of public services, accountability, clean government and environmental sustainability.¹¹¹ The *Jawa Pos* is East Java's largest circulation newspaper. Shortly after decentralization began, its editors, including then Editor-in-Chief Dahlan Iskan (now a minister in President Yudhoyono's cabinet), formed JPIP—as the current board told us—with an eye both to increasing circulation of the *Jawa Pos* and to performing a public service. JPIP's motto, prominently displayed on its website, is “*tiada kemajuan tanpa kompetisi* [no progress without competition].” In Makassar, South Sulawesi, the daily *Fajar* (Dawn), part of the *Jawa Pos* group of newspapers, is planning a similar competition in that province.

3.2.6 POLITICAL PARTIES AND ELECTORAL INSTITUTIONS

After the transition to democracy, Indonesia reverted to a multi-party system. In 1955, when Indonesia held parliamentary elections, there were four major parties, with 16-22 percent of the vote each, and an additional 24 parties with representation in parliament. During most of the Suharto New Order era, there were only three parties permitted to contest elections: Golkar, which is today's *Partai Golkar*, PDI, the precursor to today's PDIP (Indonesian Democracy Party of Struggle); and PPP, still in existence.

One of President Habibie's first reforms in 1998 was to open the gates to the creation of new parties. In 1999, 48 parties contested and 21 won enough votes to obtain seats in parliament; in 2004, there were 16 parties in parliament, while in the current 2009-2014 parliament, where a 2.5 percent parliamentary threshold has been imposed, nine parties are represented.

Among the current nine parties, most are internally weak, with poorly developed organizational structures and little accountability of the leadership to the membership or the voters. They are mostly non-ideological, with the exception of the split between secular and Islamist parties. The Democrat Party (PD), PDIP, Hanura (*Hati Nurani Rakyat*, People's Conscience) and Gerindra (*Gerakan Indonesia Raya*, Greater Indonesia Movement) are secular parties dependent on strong individual leaders. The National Mandate Party (PAN) and People's Awakening Party (PKB) are built on Indonesia's two largest Muslim social and educational organizations—*Muhammadiyah* (Followers of Muhammad) and *Nahdlatul Ulama* (the Awakening of the Ulama), respectively—but define themselves as secular parties. Of the two Islamist parties, the Muslim Brothers-influenced Prosperous Justice Party (PKS) is the strongest organizationally, while the PPP is today a patron-client party. *Partai Golkar*, having inherited an elaborate structure and local leadership from the Suharto days, is also relatively strong organizationally.

A recently conducted electoral assessment concluded that “lack of political will on the part of the parties to reform themselves is one of the major factors reducing the effectiveness of technical assistance to parties.”¹¹² This assessment team was explicitly instructed by USAID not to conduct further analysis of political parties and/or electoral institutions. Yet, we did include the electoral assessments' recommendations in the suggested results framework discussed in the final section.

3.2.7 CIVIL SOCIETY

Civil society refers to “the arena, outside of the family, the state, and the market where people associate to advance common interests.”¹¹³ CSOs vary extensively depending on many dimensions such as size,

¹¹¹ See JPIP's website: www.jpip.or.id.

¹¹² See USAID, 2012b, p. 20.

¹¹³ This definition is used by CIVICUS, an international alliance of members and partners of CSOs and networks at the local, national, regional and international levels. CIVICUS includes in this definition of civil society the following: civil society networks and organizations, trade unions, faith-based organizations and networks, professional associations, NGO capacity development organizations, philanthropic foundations and CBOs. Business organizations and media outlets are excluded from this definition and they have a separate section in this report. For more information, see <https://www.civicus.org/>.

membership base, mission and objectives; target population or the community it seeks to serve or represent, or sources of funding, just to name a few. A recent analysis of civil society organizations in Indonesia focuses mostly on NGOs, and so does this report.¹¹⁴ Subsets of NGOs considered in this report include CSOs, the main mission of which is democracy and rights advocacy and CBOs, which operate at the grassroots level.

Indonesia has a dense network of NGOs, both at the local and national levels. With the downfall of Suharto, civil society has played an ever-increasing role in political and social affairs. Indeed, NGOs—particularly student movements and faith-based organizations—were critical in organizing the mobilization that finally forced Suharto’s resignation in 1998. Yet, 14 years after the transition to democracy, NGOs continue to face serious organizational challenges, especially at the local level.

Although organizations are highly committed to their cause and motivated to engage in political and civic affairs, with few exceptions, they have limited technical capacity to accomplish their goals. Most organizations face serious difficulties in attracting and retaining highly qualified professionals. As Megan Scanlon reports in her new assessment of NGOs in Indonesia, “there is a lot of good will, but little knowledge and skills to do the job.”¹¹⁵ Furthermore, the majority of NGOs are ill staffed, and aside from women’s groups, most organizations resist hiring women. Finally, NGOs continue to be Jakarta-centric in the sense that local-level organizations rely on Jakarta-based organizations for funding, technical assistance and information.¹¹⁶

For the most part, NGOs continue to be donor dependent, a factor that undermines their sustainability and often makes organizations fall out of synch with the needs and demands of citizens for whom they allegedly work. CIVICUS’ Civil Society Index for Indonesia—the most comprehensive report on civil society organizations to date—maintains that donor dependency is one of the reasons NGOs are generally distrusted by the general public. A public opinion survey conducted in 2006 revealed that only 37 percent of citizens trusted NGOs, a percentage that contrasts with the high level of trust conferred on religious organizations, which stands at around 80 percent.¹¹⁷ Aside from being perceived as “tools of foreign propaganda,” by responding to donors’ priorities and not necessarily to the community’s needs, such as job creation, public service delivery and the needs of marginalized populations, NGOs tend to lose touch with their bases as well as credibility among the public.

According to the same survey, Indonesians are in general philanthropic about social causes, offering assistance in the form of money, goods and labor. But the monetary contributions are small and insufficient to support and maintain NGOs. More importantly, most contributions go to religious organizations rather than issue-based organizations, which as noted above, are generally not respected and/or trusted by the general public.¹¹⁸

Another reason explaining Indonesians’ low level of trust in NGOs stems from the organizations’ centralized management structures and overall lack of transparency and accountability, if not outright corrupt practices at times. According to CIVICUS, many organizations do not provide information to the public about their objectives, funding mechanisms and internal organizational structure. Although NGOs demand transparency

¹¹⁴ Megan Scanlon, “STATT, NGO sector review. Findings Report: Draft, Revisions I.” November 2012, Mimeo. Funded by Australian AID. NGOs are distinguished from the broad arena of civil society by “their relatively complex structures, reliance on paid or voluntary staff, minimum financial base and focus on servicing others through service delivery, community organizing and/or advocacy rather than engaging in self-help. Autonomous affiliated institutions of mass membership based organizations in Indonesia function as NGOs serving the wider community and not just members.” p. 4. The latter includes faith-based organizations such as NU and Muhammadiyah.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Indonesian citizens have had traditionally high levels of trust in religious organizations like NU, Muhammadiyah and some non-Muslim religious organizations. These organizations do provide social services in education, health and economic development. CIVICUS. Civil Society Index for Indonesia 2006. *A Long Journey to A Civil Society*, (2006). p.7; p. 18. These faith-based organizations have played a key role in mobilizing citizens against religious intolerance and radicalization.

¹¹⁸ Ibid., p.39.

and accountability from government, they do not always practice these virtues themselves.¹¹⁹ The most recent report on civil society in Indonesia reached similar conclusions.¹²⁰ Finally, with few exceptions, NGOs still adopt a predominantly confrontational approach vis-à-vis the government. This is a legacy from the Suharto regime, which repressed independent CSOs and obstructed their participation. Yet, the absence of effective strategies and advocacy skills limits their overall effectiveness. As one interviewer stated, “Indonesian NGOs are good at organizing against something; but they have serious limitations when it comes to articulating a policy objective and organizing around it.”¹²¹ Not surprisingly, government officials often refuse to collaborate with them.¹²²

Indeed, during the past 14 years, NGOs have been most effective in organizing against particular initiatives or reforms, forcing the government to roll back and/or take corrective action. For example, civil society reacted strongly against a vote quota provision in the electoral law that undermined the open-list method of candidate selection. After different civil organizations joined forces to protest against this quota provision, and took the case to the Constitutional Court in 2008, the court struck it down, thus opening the path for the implementation of a full-fledged open-list proportional representation electoral system. More recently, civil society mobilized mostly through Twitter and Facebook against the national police’s attempt to curb an investigation against a high-level police official accused of corruption by attempting to arrest the KPK investigator in charge of the case. The president, faced with increased societal pressure and who until then had adopted a “hands-off” attitude, was forced to intervene, siding with the KPK and ordering the police chief to allow the KPK to proceed with the investigation.¹²³

In most democracies, demand and pressure from below is a powerful driver of change. As these examples illustrate, Indonesia is no exception. When civil society is well organized and articulated, it is effective in pushing reforms forward. The problem in Indonesia is that for all that has been accomplished thus far, NGOs are still short-term oriented, mostly reactive, confrontational and distrustful of government. Consequently, they have invested comparatively few resources in strengthening their lobbying and negotiation skills, and improving their capacity to influence public opinion on different policy fronts by articulating their messages more effectively.¹²⁴ Donor dependency has also militated against the development of more sustainable organizational structures with a long-term strategic approach, as most organizations respond to short-term, project-based funding cycles.¹²⁵ Lastly, and importantly, Indonesia still suffers from a shortage of high-quality think tanks, institutes and university research centers that can provide NGOs, policymakers and the public with original research and credible evidence for policymaking. Most research services are shells rather than effective bodies. Improved research could provide NGOs with more substantive and proactive policy alternatives.

To the extent that NGOs acquire stronger organizational and advocacy skills, they can be expected to play a more critical role in building stronger demand for reform, thus deepening democratic consolidation in Indonesia. This is particularly true at the local level, where organizational and technical capacities are weaker,

¹¹⁹ Ibid., p.8

¹²⁰ Scanlon, 2012, p. 29.

¹²¹ Interview with Mr. Achmad Sukarsono, International Crisis Group, Jakarta, October 6, 2012.

¹²² There are attempts by the MOHA to control Indonesian NGOs and international NGOs working in Indonesia. Only BAPPENAS has shown greater understanding on collaborating with NGOs by including civil society strengthening as one of the issues in the government’s mid-term planning.

¹²³ *Jakarta Post*, October 9, 2012; October 10, 2012.

¹²⁴ One good exception is women’s groups that have been effective in lobbying for greater gender equality. For example, women’s groups fought for the 1999 Amendment to the Indonesian Constitution recognizing equal rights for men and women. These groups have also been effective in ensuring the ratification of several international conventions, and for the establishment of the national commission against violence against women (*Komisi Nasional Anti Kekerasan terhadap Perempuan—Komnas Perempuan*). CIVICUS, 2006, p. 72.

¹²⁵ Scanlon, 2012, p. 35.

but where opportunities for influencing policymaking and service delivery are greater. This is not only because with decentralization, local governments are playing a bigger role in decision making and service delivery, but also because local government authorities are closer to the average citizen than authorities at the central level.

The existence of linkages and networks between local and the Jakarta-based organizations mentioned above can actually become a good entry point for donors to reach out to these local-level organizations and support them directly. More importantly, donors should consider funding options to promote NGOs' greater sustainability and capacity to engage in long-term strategic planning by allowing organizations to use part of the grants to pay for operational costs.

3.2.8 MEDIA

According to Freedom House's most recent report, Indonesia ranked as a "partly free" country with respect to media freedom.¹²⁶ While Indonesian journalists still face important constraints, especially in the form of criminal lawsuits for defamation, libel and blasphemy, and in some cases, threats of violence, they generally face no major difficulties in getting access to information and reporting their news stories.

In recent years, most of the threats for media freedom have come from the owners of the media companies. The owners usually have political interests and are linked to the big parties. Some of these individuals have shown their interest in running for presidential election in 2014. The control of the media by these media "moguls" directly affects the content of the news, violating the principles of a fair and impartial media. Nevertheless, it is virtually impossible not to see a corruption scandal reported in the written media every day. Today journalists have greater opportunities than in the previous authoritarian regime to communicate with the public. Moreover, the use of social media sites has enabled journalists to instantly disseminate information and interact directly with their audience.

The rapid development of information and communication technology, which among other things has gradually lowered prices of smartphones, coupled with a robust competition among the eight cellular service providers in the country, has resulted in bundled telephone and Internet service packages that are offered from as low as U.S. \$1 per week. This has earned Indonesia its place as one of the top five largest users of Facebook and Twitter in the world. One estimate put Indonesian Facebook users to be around 40 million strong, just a little less than a sixth of the country's total population.¹²⁷

Taking full advantage of the increasing number of Indonesians joining Facebook and Twitter, all big players in the print and broadcast media business have their contents accessible through Facebook and Twitter. This provides the public greater and faster access to the latest developments in the country; it also gives the public a chance to comment on or participate in discussions over certain issues which are of interest to them. Indeed, social media sites have been used as means to raise awareness and form public opinion. The latter has been effective in building public pressure and strengthening the demand for change, as recent attempts by the police to curtail KPK's investigative authority demonstrated.

A now famous case in 2010 also demonstrates that social media is becoming an increasingly important tool for citizens to complain against poor service delivery and to demand greater accountability of government. An online support movement was critical in freeing a 32-year-old mother who was jailed after she complained about poor service delivery at a suburban Jakarta hospital. Prosecutors at that time charged her under a new law on electronic information and transactions because she had sent an e-mail message to friends detailing her complaints. A court eventually found her not guilty.

¹²⁶ Freedom House Indonesia. <http://www.freedomhouse.org/country/indonesia>.

¹²⁷ <http://www.socialbakers.com/blog/684-facebook-statistics-2012-top-growing-countries>

Without a doubt, the media is playing a greater role in the consolidation of democracy in Indonesia. Most people interviewed for this assessment recognized the power of social media in building stronger demand for change. Yet, for some conservative politicians and religious leaders, the “abuse” of social media raises concerns about possible mob rule and the loss of traditional and moral values.

More challenging, however, was the opinion of journalists from one of the country’s largest Internet news portals. While they acknowledge the outreach potential of social media outlets, they also recognized that most journalists prefer to report “bad news” because as they said, “bad news is good news for their business.” Yet, “people get tired of an excessive coverage of corrupt scandals and other bad news. When citizens only read negative stories, they become disillusioned and lose hope in the possibility of change, of a better future. Citizens want to feel good about their country; they want to feel inspired by good stories. This is why we stress reporting on positive news.”¹²⁸

The media could play an even more important role as a builder of civic values if it adopts a more balanced approach and begins to investigate and report cases of success, rather than placing exclusive emphasis on negative stories which are written in a predominantly confrontational tone.

3.2.9 PRIVATE SECTOR BUSINESS INTERESTS

The Indonesian business community is not a uniform sector. Aside from their regional differences, businesspeople do not necessarily have common interests or equal resources to defend them. Owners and/or shareholders of large businesses and conglomerates do not necessarily have the same interests as owners of small- and medium-sized businesses, and obviously, small entrepreneurs have far fewer resources and power than big entrepreneurs to voice and defend their interests.

Yet, for years, especially during the Suharto regime, the business community was regarded by most scholars, CSOs and development practitioners as a homogeneous bloc of powerful and corrupt business leaders who, in exchange for bribes, extracted lucrative rents from the government. Corruption was regarded as the name of the game for doing business in Indonesia.¹²⁹ Although deplored as unethical and considered as a tax on business, many in the business community viewed corruption as a “necessary evil” for reducing the risks of doing business in the country. As Philip Keefer notes, “businesses believed that if they paid a \$1,000,000 bribe they would get a high return on their investment because the underlying agreement that they could enter a market, enjoy a monopoly, or be exempt from particular regulations was credible.”¹³⁰

With democratization, some of the rules maintaining the tight alliance between a few business conglomerates and central government officials were undermined. Although the conglomerates survived the transition to democracy and continue to do business in Indonesia, the number of players increased significantly and corruption ceased to generate the same level of certainty as before. Aside from the proliferation of new business groups, the decentralization process empowered local government officials and increased their opportunities to extract rents and demand bribes from businesses. Even when the value of individual bribes declined, corrupt deals became less binding. As the leader of one of Indonesia’s business organizations complained, “businesspeople often need to pay bribes several times to get things done. And there is no certainty that one gets things done after paying the bribe.” This largely explains why many in the business community perceive that corruption has increased under democratization.

¹²⁸ This online newspaper has been active in promoting civic engagement. It has organized routine gatherings of bloggers (numbering in the thousands), where it provides technical support to bloggers and promotes interaction among bloggers. With a following close to one million, social media has an extraordinary potential, above and beyond the outreach of the written media, which has a much smaller audience.

¹²⁹ Vinay Bhargava and Emil Bolongaita, “The State of Corruption in Indonesia. The present impasse.” In *Challenging Corruption in Asia. Case Studies and a Framework for Action*. (World Bank, 2004).

¹³⁰ Philip Keefer, “The political economy of corruption in Indonesia.” *Mimeo* (October 2, 2002), p. 3.

In an environment where corruption remains systemic, it is not surprising that businesspeople continue to have a reputation for corruption. Yet, it is obvious that not all businesses benefit equally from the system of corruption. The largest businesses, especially those that operate in the extractive industry and banking sectors, benefit the most, for they have extraordinary financial and organizational resources to engage with government authorities compared to smaller businesses. First, owners of big enterprises continue to have unparalleled access to top government officials and therefore, have more opportunities to shape policy in their favor. Second, national business organizations like *Kamar Dagang dan Industri* (KADIN, the National Chamber of Commerce and Industry) and the Employer's Association of Indonesia (APINDO) are led by the largest entrepreneurs in the country. Owners of small- and medium-sized businesses, although members of these organizations, do not have their own independent organizations and therefore lack institutional mechanisms to make their voices heard. Finally, although large businesses complain about the increasing costs and risks of doing business in Indonesia, corruption does not threaten their businesses' existence. In contrast, small- and medium-sized businesses may find the costs of bribes too onerous to survive.

It is conceivable that small- and medium-sized entrepreneurs, who are more vulnerable to public officials' use of discretionary authority and abuse of power, may become allies of CSOs fighting for greater accountability, transparency and better service delivery. The linkages between business and CSOs are still weak and for the most part, citizens regard businesspeople as insensitive to social issues.¹³¹ But these linkages can be strengthened, especially if common interests can be identified.

3.2.10 OTHER NON-STATE ACTORS

"Almost ten years after the Bali bombing that brought terrorism in Indonesia to international attention, the country's violent extremists are weak and divided but still active." So concludes the most recent report by the International Crisis Group, by far the most authoritative chronicler of Indonesian Islamist terrorism since the Bali bombing.¹³² The report expresses strong concern that the police have been much more effective in identifying and arresting terrorists who have already committed crimes, but much less skilled in understanding why jihadi groups are still able to attract recruits. It calls for new government programs to "address the environment in which jihadi ideology continues to flourish."

On October 28, 2012, shortly after the assessment team had left the country, the *New York Times* reported that the Indonesian counterterrorism police, Densus 88, had arrested 11 people accused of planning terrorist attacks against the U.S. Consulate in Surabaya, the Jakarta headquarters of Freeport-McMoRan Copper and Gold, the U.S.-based mining company, among other targets. The accused were said to belong to a relatively new group, *Hasmi* (*Harakah Sunni Untuk Masyarakat Indonesia* [Sunni Movement for Indonesian Society]), about which little is known but, according to the police, was probably a splinter from *Jemaah Islamiyah*.¹³³ The incident underlined the main finding of the International Crisis Group earlier in the year, that Islamist terrorism, though weakened, remains a significant threat in the world's largest Muslim-majority country.

¹³¹ According to the CIVICUS survey, in 2006, 60 percent of citizens perceived that business sector is indifferent to CSOs. On the other hand, some sectors of the business community refrain from working with NGOs because the latter are too confrontational against the government. CIVICUS, 2006, p. 55. Businesses may fear an alliance with the NGO community will further increase the risks of being subjected to government arbitrariness.

¹³² International Crisis Group. (2012a). The report describes the successful breakup in 2010 of a terrorist training camp in Aceh (not connected to the now-resolved separatist conflict in Aceh), "where an alliance of almost all major jihadi groups in the country had planned to establish a base," and the arrest of some 200 individuals. It traces a subsequent wave of activity, including more than a dozen plots, by jihadis seeking revenge against the government and particularly the police.

¹³³ See also the account in the leading Jakarta daily *Kompas*, "Kelompok Teroris Baru Bernama 'Hasmi'" [A New Terrorist Group Named 'Hasmi'], 27 October 2012.

3.3 CONCLUSIONS

Indonesia is a segmented country, with more than 17,000 islands and hundreds of different ethnic groups. Governance in such a diverse and geographically fragmented country is a challenging and complex endeavor. Overall, Indonesia has been successful. The country has remained politically stable during the past 14 years, despite the introduction of significant reforms. Yet many challenges still remain.

Unlike many other countries, the transition to democracy in Indonesia was relatively peaceful. It came about after President Suharto resigned from office. Democracy was not a product of a social revolution that dismantled the old bureaucratic structure. In fact, the legacy of the old bureaucratic “mind set” continues to militate against the deepening of democratic reforms. Rather than transforming and/or eliminating old government agencies, the government often creates new ones to avoid obstruction. The result is a bloated bureaucratic structure that generates confusion and increases complexity in government affairs.

For a few years after the fall of Suharto, the central government enjoyed a favorable environment for the introduction of vast and substantive political reforms. Yet over the years, the government’s room for maneuver began to narrow, as those who had a stake in the status quo began to organize and consolidate. Furthermore, the implementation of reforms began to generate new adversaries, as reforms did not always produce the expected results. For example, the decentralization reforms were introduced in haste and without much planning. Local and district-level governments were suddenly confronted with new authority, resources and responsibilities for which they were not prepared and lacked technical capacity. Provinces were left with few responsibilities and resources, frustrating their coordination function. As a result, many government officials now believe that some government functions and responsibilities need to be recentralized. These officials are not necessarily conservative and/or supportive of authoritarianism; rather, they are concerned with the implications of introducing a reform which they now believe was poorly designed.

Finally, many of the powerful interest groups that operated (and profited) during the Suharto regime continue to exist and still exert a strong influence on politics and policymaking. These groups have benefitted from the system of corruption and opacity that has characterized Indonesian politics for decades, and they are expected to use their power to obstruct reforms that significantly challenge the status quo, particularly those that seek to generate greater transparency and accountability of government.

Despite the many challenges for the deepening of governance reforms, champions of reform exist in virtually every government agency at the central and local levels. At the central level, these champions are not well articulated and can easily become trapped in the complex bureaucratic web that resists the deepening of democratic governance reforms. At the local level, these champions have broader room to maneuver and can therefore play a more critical role in pushing forward the reform process. The introduction of direct elections for mayors and district heads generates a powerful incentive for these officials to perform better and become more accountable to the electorate. Not surprisingly, the local level has become the “laboratory of democracy” in Indonesia, where a combination of highly motivated leaders and a strong and well-articulated civil society can make a difference.

4.0 STEP THREE: USAID INTERESTS AND U.S. GOVERNMENT PRIORITIES

4.1 U.S. FOREIGN POLICY AND BROADER USAID DEVELOPMENT INTERESTS

Indonesia has a large percentage of world trade transits, extensive natural resources and the strategically important sea lanes that link the Middle East with East Asia. Indonesia is also perceived by many as the geopolitical center of the Association of Southeast Asian Nations (ASEAN), which is a critical actor in the geopolitical dynamics of the larger Asia-Pacific region. Future progress in Indonesia could reverberate around the region and so the Mission's budget should reflect this importance. Yet a paradox remains in that while Indonesia faces increasing pressures from other countries—especially in the region—to assist, Indonesian democracy still remains subject to its own domestic fragility.

As the overwhelming majority of Muslim citizens subscribe to a moderate form of the religion, Indonesia has the potential to act as a counterbalance to more extreme expressions of Islam. Nevertheless, radical Islamist and terrorist cells have operated in the country. Internal strife and social dislocation stemming from a variety of causes have undermined Indonesia in the past.

In recent years, U.S. policy toward Indonesia has focused on cementing ties with a geopolitically important state that can play an active role in regional diplomacy and encourage Indonesia to combat terrorism and effectively counter the rise of violent Islamic militancy. The United States has sought to promote democracy, the rule of law and human rights, and to further American trade and investment interests. Human rights concerns about the armed forces and particularly issues in Papua have been an unresolved tension in the bilateral relationship. President Obama's visit in November 2010 served to broaden the relationship between the United States and Indonesia. A key outcome included the Comprehensive Partnership Agreement, which has five priority areas, including "Democracy and Civil Society."

This partnership, similar to its pivotal role in ASEAN, is one of many indications that Indonesia is emerging as a leader in the region in terms of the promotion of regional integration, peace, and stability and democracy. This role is of key interest to the United States.

Indonesia has a long legacy of South-South Cooperation, dating back to the 1955 Bandung Conference, Non-Aligned Movement, G-77 and more recently, the G-20, Asia-Pacific Economic Cooperation (APEC) and ASEAN initiatives. Key milestones include the 2009 Jakarta Commitment (adoption of the Paris Declaration, including a commitment to strengthen Indonesia's South-South Cooperation efforts), the 2010 integration of South-South Cooperation into Indonesia's Medium- and Long-term Development Plans, the establishment of the National Coordination Team (Ministry of Foreign Affairs, Ministry of Finance, BAPPENAS and State Secretariat) and the finalization of Indonesia's South-South Cooperation Policy—the Grand Design and

Blueprint documents—pending approval by the president. More recently, Indonesia has provided development assistance to countries such as Afghanistan, Thailand, Vietnam and the Philippines.

Indonesia has begun participating in various development forums, including the Development Assistance Committee (DAC), a committee of the Organization for Economic Cooperation and Development (OECD).¹³⁴ Indonesia is a member country of CIVETS (Colombia, Indonesia, Vietnam, Egypt, Turkey and South Africa), an acronym used for countries with emerging markets, diverse and dynamic economies and a growing youth population. Moreover, the country plays a critical role in triangular cooperation for the provision of aid and foreign assistance, in cooperation with the U.S. Government. Indonesia has begun to provide technical expertise in the areas of institution building and performance monitoring and accountability.

USAID is still implementing its *Forward* objectives, many of which USAID/Indonesia has worked on, including local capacity development. The U.S. Government is also increasing development and diplomacy which has elevated the role of USAID throughout the Mission.

4.2 USAID'S CURRENT DRG PROGRAM

USAID partners with the GOI and independent institutions, civil society organizations and local communities to improve the ability of democratic governance to deliver tangible benefits to Indonesians. USAID invests in governance (anti-corruption, local governance and service delivery), rule of law, political representation (parliament, political parties and civil society) and support for peace and a democratic culture. USAID/Indonesia continues to implement cross-sectoral governance programs that collaborate with sectors such as education and health. USAID also facilitates a critical role for Indonesians, inside and outside of government, in sharing experiences, successes and lessons in the country's democratic transition and efforts toward consolidation to assist other countries in these processes. Annex 2 briefly describes DRG programs.

The Mission has gained a wide array of experience and lessons learned in DRG programming in Indonesia, including the importance of addressing both supply and demand in the governance arena. For example, DRG often tries to couple programs working to strengthen institutional capacity with NGO work to demand greater transparency and accountability. The Mission also focuses on finding and working with more reform-minded individuals within the government.

USAID also supports peer-to-peer engagement among GOI counterparts and U.S. Government counterparts to exchange learning experiences. They have also occasionally supported exchanges between key DRG-related Indonesian government and/or independent institutions and those of other transitioning or consolidating countries in the region. See Annex 3 for a brief description of other USAID and U.S. assistance programs.

4.3 USAID'S RESOURCES

In 2009, the total Mission budget accounted for over \$263 million in funding with about 51 percent discretionary funds, which are often used for DRG programming. The budget has steadily declined over the past three years with a total 2012 budget of \$152 million. Of this budget, around 95 percent was reserved for earmarks and special initiatives, while only about 5 percent of the budget was discretionary. These special initiatives and earmarks are often for programming in technical areas like health, education and environment.

While the 2012 USAID DRG budget is \$20 million, and is the largest DRG budget in Asia, it has been scaled down as a result of the tight budget climate in 2011 and 2012. The USAID budget is a small fraction of the

¹³⁴ DAC serves as a forum for OECD member states to discuss issues surrounding aid, development and poverty reduction in developing countries.

total GOI budget. USAID's ability to influence systemic change in the country may be most likely by influencing policy, either on a peer-to-peer basis and/or by establishing models and best practices.

While increased peer-to-peer work and USAID *Forward* objectives to develop capacity may require fewer resources compared to larger-scale contracts and managing units, they do require human resources. The team still manages several large contracts and a variety of smaller grants and cooperative agreements.

The DRG Team has also taken initiatives with other technical teams (e.g., environment) to work within these earmarks to add a DRG component to this work and bring technical areas like environment within the purview of the DRG Team.

4.4 DONOR COORDINATION

The donor community is active in Indonesia. The role and influence of donors on democratic change in Indonesia is tempered by the fact that donor budgets are a modest proportion of the GOI budget and that Indonesia is a large, diverse, middle-income country, with prospects for continued growth and a rising position as a regional power. In this landscape, systemic, catalytic change is largely a function of influencing policy.

The largest donors investing in the DRG arena in Indonesia include the World Bank and Australia through the Australian Agency for International Development (AusAID). The Asian Development Bank, Germany, German International Cooperation Agency (GIZ), UK, Canadian International Development Agency (CIDA), United Nations Development Program (UNDP), and the Netherlands are also investing in DRG programs. The key areas of focus have included elections, governance including a large focus on decentralization, rule of law and civil society. Donors do not coordinate their activities on a regular basis. Although a donor coordinating group was formed with the GOI, it was disbanded. As Megan Scanlon reports in her recent assessment of NGOs in Indonesia, “the existence of differing ‘home’ agendas works against coordination efforts as competition among donors and the divergence of agendas and procedures lower donors’ interests in working together.”¹³⁵

A snapshot of the largest donors follows: AusAID has announced a commitment to increase its development investment by one-third, from approximately \$600 million for 2012/2013 to \$900 million. On elections, AusAID supports strengthening electoral management bodies, electoral laws and targeted support for local elections. On rule of law, AusAID supports programs to improve transparency of court decisions and develop legal aid. On decentralization, AusAID invests in improving skills of local governments, strengthening administration, consultation, and transparent budgeting. AusAID is also investing in women's leadership. The World Bank “Local Government and Decentralization Project for Indonesia” is a four-year \$220 million investment (2010-2014) that aims to improve the accountability and reporting of the central government's Specific Purpose Grants (DAK) for the infrastructure sub-sectors within pilot local governments. The GOI also invests in this World Bank program.

4.5 PRACTICAL CONSTRAINTS ON THE RECIPIENT SIDE

DRG works with several central and local government agencies in the consultation process and throughout a project to inform the GOI. While USAID often works with reformers in government, there are still many in government who lack political will and/or stand to gain from slowing down the pace of reform. In the central government, there is capital and human resources for reform agendas.

¹³⁵ Scanlon, 2012, p.35.

Development assistance for DRG is coordinated by BAPPENAS. The DRG Team consults the GOI in its programming. DRG signs an Assistance Agreement with BAPPENAS, and then USAID works through BAPPENAS to implement DRG programming.

The GOI has a sufficient national budget and in some offices, national budgets are not absorbed. However, closer to the local level this is not the case. Currently, donor budgets at the central level serve as complementary to the GOI national budget. The central government generally has sufficient funds; government officials seek technical assistance from USAID. Because the GOI does not rely on U.S. Government money, it often implements several rules and requirements for donor funding.

There are still significant political commitment and capacity issues within the central and local government, especially at the local government level. USAID and other donors train individuals, for example, from local government and the AGO and then they are moved to another geographic location or technical area. This shows lack of political commitment to gain on these investments, which are lost when the transfer occurs. Furthermore, getting buy-in from local government takes time. For example, it takes time to gain political capital to convince local governments to match budget allocations with U.S. Government investments. In Papua, challenges are generally the same, but there is a lack of local resources to deal with geographic challenges to allow for effective coordination with donors, so this is an area where Indonesia needs to focus.

The GOI is in principle open to donor assistance. It is increasingly requiring donor agencies to comply with aid effectiveness principles. However, the government's guidelines are not always clear as to what information is required and the reasons why. To its credit, the GOI wants increased transparency in donor funds. Increasingly, local governments are also asking for Memoranda of Understanding for every program with local government.

Indonesian civil society organizations are vibrant. They have played significant roles in transitional democracy. Elite civil society organizations (mostly at the national level) normally have better organizational capacity and internal governance. Civil society organizations outside of big cities, however, have lower capacity to manage and implement donor-funded programs.

Most of the Indonesian civil society organizations are receptive of U.S. assistance. USAID incorporates civil society organizations in most of its DRG programming. However, many of these civil society organizations still have problems keeping up with USAID financial requirement. Because of this, USAID builds in the financial training, prior to a grant award, for its implementers/grantees. Capacity development takes a long time, but generally we have seen that financial training has improved capacity. Additionally, there is a serious concern for the future sustainability of civil society organizations, especially those DRG organizations that are completely reliant on foreign donor funding.

5.0 STEP 4: OUTLINING THE PROPOSED STRATEGY

5.1 STRATEGIC GUIDELINES

As discussed above, Indonesia is a strategic ally of the United States. Although USAID is not the largest donor in the country, it is in a unique position to leverage its resources and achieve maximum results. As was clear in most of our interviews, Indonesians admire the United States, even when they are highly nationalistic and proud of their country. They view the United States' size, its highly decentralized governance structure, its active and robust civil society and its economic dynamism—even in this day and age, with a challenging financial crisis confronting the U.S. economy—as relevant to Indonesia's realities.

Moreover, Indonesia is not a poor country, even when an estimated 30 million people remain poor or live in extreme poverty conditions. Donors play a supporting role, but Indonesia is not a donor-dependent country. Almost all central government officials interviewed for this assessment acknowledged that Indonesia does not need U.S. resources. Indeed, when compared to Indonesia's national budget, USAID's total investments in the country represent “a drop in the bucket.” Yet, while they do not need U.S. resources, government officials are eager to be exposed to good ideas, best practices and effective solutions to complex problems which have been successfully implemented in such a large, rich, diverse and decentralized country as the United States.

5.2 STRATEGIC RECOMMENDATIONS: OBJECTIVES AND RESULTS

The following recommendations on development objectives, intermediate results and sub-results take into consideration USAID's manageable interests; that is, results that USAID together with its implementing partners can materially affect with its activities and programs and for which USAID could be held accountable during a five-year period.¹³⁶ These recommendations take into consideration the country's context as well as the expected level of USAID funding in the near future. They also take into account areas and sectors deemed to be most receptive to successful interventions.

The assessment's conclusions were that poor service delivery (weak government effectiveness) along with an inefficient and deeply corrupt justice system (weak rule of law) represented the most important governance challenges in the country. Therefore, **the recommendations of this assessment are that USAID focus and concentrate its programs on improving government effectiveness at the local level, where public services are delivered, and on strengthening the demand for greater judicial performance and accountability.**

This assessment also integrates the recommendations of an independent electoral assessment conducted in Indonesia in April 2012. That assessment recommended that USAID continue its electoral program, supporting both electoral authorities and civil society organizations to improve electoral administration and secure clean and fair elections in the future. Ensuring that the next presidential elections of 2014 are fair and clean, and that results are accepted as valid and legitimate, is critical for democratic stability in the country.

¹³⁶ USAID, ADS Chapter 201, p. 10. <http://transition.usaid.gov/policy/ads/200/201.pdf>.

The overall DRG Objective should be to strengthen the quality of governance in Indonesia by increasing the effectiveness of government institutions to respond to citizens' needs and demands and by strengthening the capacity of civil society organizations to demand greater integrity and accountability of government.

In designing programs and projects for the next five years, USAID should continue to engage with central government officials at the executive, legislative and judicial sectors, particularly those highly committed to reform.¹³⁷ Yet, it is recommended that USAID **refrain from investing in complex programs with central government institutions and agencies**. Following the Agency's *Forward* principles, USAID should establish strategic partnerships with key government institutions and agencies through a combination of peer-to-peer policy dialogues, study tours and targeted technical assistance. National-level government officials in Indonesia welcome being treated as partners rather than donor recipients. They do not believe they need U.S. resources; they want good ideas.

At the national and local levels, USAID should continue to support NGOs, particularly those working on the areas of governance reform and greater accountability of government. As we have contended in this assessment, civil society can become a powerful driver for reform when civil society organizations are strong and well organized, when they are able to articulate their message effectively, act proactively and learn to advocate effectively.

At the local level, USAID should **support projects aiming at increasing local government's capacities** to provide adequate public services and effectiveness in responding to citizens' needs. Public services are defined broadly, including health, education, land titling, environmental protection, and importantly, access to justice.

If opportunities exist, assistance can also be provided to mitigate corruption practices in key government offices, by supporting initiatives that directly affect the structure of incentives that drive corruption.

Finally, projects should also be directed **to enhance and strengthen local NGO capacities** to demand better and more accountable government services. Increasing the demand for better service delivery and accountability depends in large part on the awareness of citizens' rights and on a certain level of dissatisfaction with the quality of services citizens receive. As noted in this report, in Indonesia, citizens are still too complacent with regards to the quality of service delivery. Linking communities and their NGOs to local governance processes will not only allow for greater responsiveness and accountability, but enable greater sustainability.

With decentralization and the introduction of direct elections of mayors and district heads, the opportunities for implementing reform at the local level have increased. This is one of the reasons for recommending that USAID concentrate most of its programs and projects at the local level, where its chances to achieve results in the short to medium term (five to ten years) are greater than at the national level. Moreover, it is at the local level where both civil society and government authorities confront the most serious weaknesses and where donor support is most needed.

In a country as large and diverse as Indonesia, obviously USAID will need to prioritize the regions where it wants to intervene. To achieve maximum results and avoid the dispersion of programs, we recommend selecting a few priority districts and municipalities and concentrating most investments there. Some suggested criteria for identifying priority regions include:

- Existence of champions of reform in local government;

¹³⁷ In the justice sector, in particular, a sector that is centralized, USAID has made significant inroads into relationships with reformers. Continuing engagement with these stakeholders is important and should be maintained, especially if greater opportunities for reform open up at the national level in the future.

- Assessment of need (quality of public services, potential for conflict, rising levels of Islamic fundamentalism);
- Potential for scaling up and demonstrating best practices;
- Existence of other USAID programs where synergies can be created; and
- Existence of other donors in the region.

Obviously, USAID will have to balance different elements, for these factors may contradict one another. For example, a region regarded as critical because it has the most need may lack a strong local champion, or may not be the most adept at replicating successful experiences.¹³⁸ In this context, and consistent with the conclusions of the Strategic Assessment of Papua conducted in June 2012, USAID could include specific districts and municipalities in Papua as one of its target regions.¹³⁹

Finally, to the extent possible, **USAID should mainstream governance approaches across sectors**, ensuring that education, health, environment and economic growth programs include good governance results in their results frameworks. In designing anti-corruption interventions, USAID should identify the structure of incentives that drive corrupt practices in specific sectors, and program interventions aimed **at increasing the risks and reducing the opportunities for engaging in corrupt behavior**. To ensure that anti-corruption interventions are effectively mainstreamed throughout USAID's programs, it is critical to identify realistic and manageable results and to craft appropriate indicators in USAID's Performance Management Plans.

The KINERJA project appears to be a good example of how to mainstream governance approaches and ensure collaboration across sectors. Moreover, **gender, religious tolerance and anti-corruption activities should also be mainstreamed across projects**, ensuring as much as possible that projects have special consideration for gender equality, transparency and accountability and freedom of religion and expression.

5.3 DEVELOPMENT HYPOTHESIS

Enhancing the quality of democratic governance in Indonesia is critical for the full consolidation of democratic institutions. The legitimacy of democratic regimes depends not only on their capacity to guarantee free and fair elections and protect citizens' rights. Democracies also need to have the capacity to deliver public services effectively, respond to the demands and needs of citizens, protect citizens against abuse and injustice and bring about economic prosperity.¹⁴⁰ On these accounts, Indonesian democracy still has a long way to go. Although consensus exists in Indonesia today that democracy is the best form of government, in the long run, if democracy cannot make a difference in people's lives—if it cannot reduce poverty and inequality, improve the quality of public services, generate economic opportunities for its people, demonstrate greater effectiveness in curbing and controlling corruption and guarantee citizens access to fair and impartial justice—it might lose the credibility and legitimacy it currently enjoys.

¹³⁸ In this discussion, we considered whether it is time to move out of Aceh, a province that has received significant donor support. Some good reasons to move out include achievement of major donor assistance goals, namely, peaceful resolution of conflict and completion of major infrastructure projects. Aceh is receiving significant resources from the central government as part of the province's special autonomy status. There are currently no clear signs of political will to confront the province's governance problems, particularly the proliferation of corruption. After Jakarta, Aceh is considered by the State Audit Agency (BPK) as the second most corrupt province in Indonesia. State Audit Agency, Report on "amount of state losses in provinces." 2011.

¹³⁹ The USAID Mission in Indonesia believes that there is a strong argument for engagement in Papua from the perspective of assisting in community governance using multi-sectoral tools for improved stability. Papua plays a key strategic role, for the failure in Papua will have repercussions for Indonesia's credibility as a modern democracy engaged as a regional and global leader.

¹⁴⁰ Larry Diamond and Leonardo Morlino, "The Quality of Democracy: An Overview, *Journal of Democracy* (15:4, October 2004).

This assessment has elaborated a strategic approach through which USAID can support Indonesian attempts to improve its governance despite the constraints that remain. This strategic vision can be linked to programmatic recommendations through the following development hypothesis.

Development Hypothesis

- *If* Indonesian government can better promote economic growth and deliver adequate public services to its citizens, and
- *If* there is strengthened demand for greater judicial performance and accountability, and
- *If* there is increased effectiveness of electoral authorities to secure clean and fair elections,
- *Then* the quality of governance in Indonesia will be strengthened.

The development hypothesis is premised on the assumption that in Indonesia, as in most democracies, civil society's demand is a critical driver of change. To the extent that civil society is well organized and articulated, it can generate sufficient pressure from below to mobilize political will for reform. Yet, political will is not enough. Government officials willing to introduce substantive reforms also require stronger technical capacity to plan strategically, manage personnel, administer public resources, monitor and evaluate government performance, learn from best practices and comply with regulations. To the extent that public officials become more competent and motivated, they will be readier to confront the expected challenges that await any effort to defy powerful vested interests with a stake in the status quo and to overcome the many legacies that Indonesia has inherited from its past—such as corruption, lack of accountability, bureaucratic inertia and weak commitment to service delivery.

USAID is in a position to leverage resources effectively by engaging champions of reform at the national and local levels and investing strategically in projects that can make a difference in citizens' lives. If successful, these projects can eventually be replicated and scaled up at the national level.

As mentioned before, USAID should refrain from investing in costly projects at the national level. Yet, engagement with national-level government authorities at the executive, legislative and judicial branches of government is critical in maintaining the U.S. partnership with the Indonesian government and ensuring its collaboration—and hopefully buy-in—in implementation of USAID's projects and programs. To that end, **strategic partnerships with key national institutions and reform champions** are encouraged through a combination of peer-to-peer policy dialogues, study tours, exchanges and targeted technical assistance. This is particularly critical in the justice sector, since the justice system is centralized.

In deciding the most adequate and effective technical assistance, USAID might want to conduct a performance evaluation of programs it is currently implementing at the national level with the KPK, the Public Information Commission, the DPR, the Supreme Court and the AGO. These evaluations will shed light on the accomplishments of these projects, identify the most successful interventions and best practices, and make recommendations on the types of technical assistance and/or other targeted interventions that could be supported in the future.

USAID will contribute to the enhancement of the quality of governance through three intermediate results (IRs): 1. **Improved effectiveness of the Indonesian government to sustain economic growth and deliver adequate public services to its citizens;** 2. **Strengthened demand for greater judicial performance and legal accountability;** and 3. **Increased effectiveness of electoral authorities to secure fair and free elections**—this sub-result is the recommendation of the electoral assessment recently conducted in Indonesia. For a graphic representation of these results please see the suggested Results Framework in Annex 4.

5.3.1 RESULTS NARRATIVE

IR 1: IMPROVED EFFECTIVENESS OF THE INDONESIAN GOVERNMENT TO SUSTAIN ECONOMIC GROWTH AND DELIVER ADEQUATE PUBLIC SERVICES TO ITS CITIZENS

Most public services are delivered at the local level. As discussed before, public services are defined broadly, including health, education, housing, environmental protection, property rights and access to justice. Although citizens in general have a positive perception of the performance of government services, particularly in the areas of health and education, Indonesian social indicators reveal otherwise. As argued before, Indonesia is lagging behind other middle-income countries in terms of its social indicators, particularly in health and education. To improve the effectiveness of government, the assessment team has identified three sub-results.

SUB-IR 1.1: TECHNICAL CAPACITY OF LOCAL GOVERNMENT OFFICIALS IN TARGETED AREAS IMPROVED

In general, local government authorities have weak technical capacity to implement policy and deliver quality services. Furthermore, corruption is systemic throughout the government and negatively affects the quality of services. Finally, although local governments now face a more active citizenry during electoral periods, in between elections, local authorities are not pressed by a more assertive and demanding civil society to improve the quality of their services.

Illustrative Activities

- Conduct an evaluation of the KINERJA project to assess the results of this cross-sectoral initiative. Incorporate best practices and lessons learned into new programs.
- Work through provincial universities and support capacity enhancement training programs for local government officials in areas such as performance-based management, financial management, monitoring and evaluation, internal control frameworks, regulatory compliance and conflict resolution.
- Identify key local government offices in selected districts and municipalities (health, education, water and sanitation, environmental protection, local courts) and provide direct technical assistance in participatory planning, minimum quality standards in public service delivery, public outreach and communication strategies.
- Assist local governments in complying with the law of access to public information—dissemination of information about government activities and response to information requests.
- Conduct a needs assessment of district/municipalities treasurer's office and provide training and technical assistance in financial planning, budgeting, accounting, etc.
- Facilitate exchanges between government officials at different levels of government (national, provincial, local) to improve communication and coordination of functions and responsibilities.
- Provide technical assistance for the introduction of alternative dispute mechanisms to resolve problems that affect the communities such as land tenure conflicts and domestic violence.
- Support victims' assistance programs, such as shelters for victims of domestic violence.

SUB-IR 1.2: CIVIL SOCIETY EMPOWERED TO DEMAND BETTER SERVICES AND GREATER INTEGRITY

The positive public perceptions of government performance are puzzling. Even considering the limitation on data collection and other methodological aspects of these surveys, the results are nonetheless revealing. Aside from lack of information on minimum quality standards, these perceptions demonstrate that citizens may not be aware of their rights. As noted in this assessment, citizens are relatively passive and too complacent with the quality of services they receive. Some level of dissatisfaction may be a good catalyst for action.

As argued above, CSOs and NGOs are not too actively involved and/or well-articulated to demand better service delivery and greater integrity from government officials, especially at the local level. Moreover, the level of debate on public policy issues is scant and ineffective in fostering a more informed and persuasive dialogue with public officials. Although now that there are direct elections, citizens can reward or punish government officials with their vote; in between elections, citizens have few mechanisms to demand greater

accountability from government. Moreover, NGOs are, in general, donor-dependent and do not always become engaged in the issues that affect their communities directly. However, current capacity constraints facing civil society can be addressed to make them more effective advocates for better government performance and accountability. A key element in improving the effectiveness of Indonesian civil society is improving the NGO's own internal democracy and lines of accountability. Such work is also consistent with Secretary Clinton's guidance regarding the involvement of CSOs being done under the Comprehensive Partnership. Promoting CSO advocacy for minority rights is one way in which greater tolerance can be advanced by state-society collaboration.

Civil society could be empowered and its potential to promote change from below maximized to the extent that three lower-level results are achieved:

- **1.2.1: Civil Society's Organizations Advocacy and Organizational Capacities are Strengthened**
- **1.2.2: Public Debate on Policy Issues Increased**
- **1.2.3: Increased Awareness of Civil Society on their Rights**

Illustrative Activities

- Provide training and technical assistance to NGOs to enhance their internal organizational structures [focus particularly on strategic planning, financial administration, grant applications and reporting to donors, communication and outreach, membership participation and advocacy skills. This includes efforts to disseminate information about their mission, objectives and results in order to improve their image within their communities, gain greater public trust and attract greater public support.
- Through training and technical assistance, strengthen NGO technical knowledge and professional competence of the substantive areas in which they operate (environment, education, health, justice, etc.).
- Consider funding NGO operational costs so they can become more sustainable.
- Promote diversification of funding opportunities.
- Support CSOs and NGOs that are engaged in promoting greater religious tolerance.
- Provide technical assistance to NGOs on using the law of access to public information to request information about government activities, such as procurement decisions, budget allocations, and public expenditures.
- Promote a media campaign to inform citizens of minimum standards of public service provision and make them more aware of their rights.
- Support think-tanks that produce good quality research and encourage analysis of key public policies that can inform policymakers and influence public opinion.
- Support think-tanks and/or other research institutions to conduct analysis on public expenditure at the national and local levels.
- Facilitate exchanges between local businesspeople and NGOs, and find topics of common interest where they can work together.
- Support NGOs in the production of citizen scorecards or similar mechanisms to monitor and evaluate the performance of local governments in the provision of key services (education, health, environment, etc.).
- Support the production of local radio talk shows, where local government representatives can hear and respond to citizen concerns.
- Replicate the *Jawa Pos* Institute of Pro-Otonomi award for best local government performance.
- The Mission might want to conduct a further civil society assessment to best prioritize and assess assistance flows in the future.

SUB-IRI.3: CORRUPTION IN TARGETED AREAS MITIGATED

As mentioned in this report, champions of reform exist in many local government entities. To the extent that political will exists to improve the quality of service delivery by mitigating corrupt practices, USAID can become an important partner, assisting government and NGOs in introducing anti-corruption reforms. USAID has extensive experience in this field and can disseminate best practices learned from successful interventions around the world. The key to any successful anti-corruption program is to reduce the incentives that motivate corrupt behavior in the first place, without attempting to eliminate or eradicate the problem entirely and/or privileging punitive solutions. Examples include reducing red tape which encourages the use of bribes to expedite bureaucratic processes, providing clear and detailed information of necessary requirements for obtaining a public service, introducing electronic accounting systems to reduce opportunities for embezzling public funds and introducing internal controls to detect and prevent corrupt practices. Targeted interventions can be piloted in key government offices, such as offices responsible for issuing drivers' licenses, birth certificates, and land titling. If successful, these interventions can be scaled up to other government offices.

Based on international best practices, corruption can be mitigated if three lower-level results are accomplished:

- **1.3.1: Bureaucratic Procedures Streamlined**
- **1.3.2: Internal Controls Improved**
- **1.3.3: Increased Citizen Oversight of Government Performance**

Illustrative Activities

- Support key government offices in reducing red tape and improving the quality and efficiency of public service delivery. One-stop shop offices, like those supported by the KINERJA project, should be replicated if an evaluation demonstrates that this initiative contributes to enhancing quality of service delivery and reducing opportunities for corruption.
- Assist local governments in introducing a comprehensive internal control framework following international standards such as the COSO model. Internal controls are essential for reducing the opportunities to engage in corrupt practices, as performance of government officials is more closely monitored and evaluated.
- Promote the adoption of citizen charters in government offices, where government officials inform the public about their rights and provide detailed and clear information about the necessary requirements citizens need to comply with for obtaining a public service.
- Support social auditing of key public services such as education, health, water and sanitation and local courts. Through the use of community scorecards, citizens can evaluate the quality of their services and provide feedback to government authorities, thus becoming more aware of their needs and rights and eventually increasing their demand for better public services.
- Undertake an assessment of campaign financing to explore ways to increase transparency in this regard.

IR 2: STRENGTHENED DEMAND FOR GREATER JUDICIAL PERFORMANCE AND LEGAL ACCOUNTABILITY

Strengthening the rule of law in Indonesia is a long-term objective and a result too ambitious and far beyond USAID's manageable interests. Building stronger demand for greater judicial performance and legal accountability, on the other hand, is a more realistic and manageable result. As we discussed above, strong demand from below is a critical catalyst of change. Access to justice from the community side may be viewed through a similar prism as the provision of other public services, with both demand and supply side elements contributing to the most effective performance. Demand for justice starts at the local level, where citizens have issues that need to be settled through a court of law. Of course, the justice sector is centralized and this is why the collaboration of central-level institutions is essential, if not to attain their full support, at least not to block major reform efforts or initiatives. The strength of demand for a fair, equitable and impartial justice

system will depend on the capacity of NGOs and the media to articulate their message, coordinate their actions and engage in a broad coalition for judicial reform. It will also depend on the enhancement of the legal profession's performance, which as reported earlier, still has much room for improvement. Attracting good professionals and qualified lawyers to the public sector depends in large part on improving the prestige and salary pay of judges and prosecutors. An essential element in this regard is the introduction of minimum acceptable standards for certification as a legal practitioner.

Obviously, at the national level, key governmental officials at the Supreme Court, the Attorney General's Office, and the Corruption Eradication Commission (KPK) need to become fully engaged, and to the extent specialized technical assistance is required, USAID should be ready to provide it. But the bulk of USAID investments in the justice sector should be focused on strengthening demand from below. This will further emphasize access to justice issues as well as institutional-building efforts.

This intermediate result in turn depends on the achievement of four sub-results:

- **Sub-IR 2.1: Increased Organizational and Advocacy Capacities of NGOs (human rights, religious tolerance, fair and equal access to justice, etc.)**
- **Sub-IR 2.2: Increased Media Expertise to Analyze and Report Legal Affairs**
- **Sub-IR 2.3: Enhanced Performance of Legal Professionals.**

The assessment team believes that two lower-level results are important for improvement the performance of the legal profession:

- **2.3.1 Legal Training Improved**
- **2.3.2 Quality Standards for Legal Profession Developed**
- **Sub-IR 2.4: Increased Citizen Awareness of Their Rights to Equal Access to Justice.**

Illustrative Activities

- Support NGOs that work in the justice sector and offer training and technical assistance to improve their internal organizational structure.
- Promote the integration of a broad social coalition advocating for greater access to justice and more integrity and accountability of justice sector officials.
- Support journalists and other media outlets in investigating and reporting on cases involving the justice system.
- Promote a civil awareness campaign to educate citizens about their rights to equitable and fair access to justice.
- Continue to support training programs to improve the quality of legal education in Indonesia. The training should be linked to a certification program (like a bar exam).
- Support the development of widely agreed standards for legal professionals and assist relevant institutions to develop an implementation plan to apply these standards.
- Support the development of a certification system for legal professionals.
- A deeper look into the justice sector is warranted as greater demand for access to justice brings more attention to the remaining rule of law deficits. Current justice programs will also be concluding evaluations that will provide the occasion for reconsideration of this portfolio.

IR 3: INCREASED EFFECTIVENESS OF ELECTORAL AUTHORITIES TO SECURE FAIR AND FREE ELECTIONS

The assessment team included the recommendations derived from an independent electoral assessment conducted a few weeks before this DRG assessment. The electoral assessment concluded that "lack of political will on the part of parties to reform themselves is one of the major factors reducing the effectiveness of technical assistance to parties," and therefore they recommended that USAID focus its political party assistance on targeted training to women's candidates. In addition, they recommended assisting electoral

institutions in strengthening their institutional capacity to administer elections, thus reducing the threats to the integrity of electoral results, particularly in the upcoming elections of 2014.

This intermediate result depends on the achievement of three sub-results:

- **Sub-IR 3.1: Strengthened Electoral Institutions**
- **Sub-IR 3.2: Increased Citizens' Understanding of and Confidence in Indonesia's Electoral Processes**
- **Sub-IR 3.3: Improved Women's Representation in Political Parties and Enhanced Opportunities to be Elected to Office.**

Illustrative activities

- Establish an appropriate system for voter registration, which may mean implementing the findings of the voter registration committee—if the new National Election Commission (KPU) decides to follow those recommendations.
- Interpret and publicize changes to the electoral legal framework, including laws and regulations.
- Strengthen outreach and public engagement capacity.
- Develop and implement a new results tabulation system, whether manual or electronic.
- Provide technical assistance and potentially some targeted training for stakeholders engaged in the electoral adjudication process including members of the *Bawaslu* and *Panwaslu* election oversight bodies, and election-focused members of the police, prosecutorial services and judiciary, to the extent they are created or can be identified.
- Partner with local NGOs, universities, and/or other local entities on voter education to increase public understanding of the electoral process.
- Provide support to local NGOs to monitor the entire electoral process, including pre-election, election-day and post-election monitoring.
- Foster greater sustainability of NGOs working in the electoral field, to include those advocating access to the elections by persons with disabilities.
- Provide targeted training to female candidates—to improve their campaign and political skills, thereby making them more electable.

Additional activities not included in the electoral assessment

- Simplify the ballot to avoid confusion and reduce percentage of null votes.
- Foster policy dialogue on the convenience of introducing political party finance reform.
- Participate in the current dialogue taking place among intellectuals and party officials on reforms of candidate recruitment policies.

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ANNEX I. SUMMARY OF PEOPLE INTERVIEWED

City/Location	Organization/People Contacted
Jakarta	71
Surabaya—E. Java	16
Banda Aceh—Aceh	15
Palangkaraya—C. Kalimantan	9
Kupang—NTT	10
Makassar—S. Sulawesi	17
Total	138

ANNEX 2. SUMMARY OF USAID/DRG PROGRAMS

Governance. To reduce corruption, USAID bolsters the capacity of government institutions to prevent, expose and punish corruption and other abuses of power and of the media, NGO and citizens “watchdog” groups to monitor and expose these abuses. To improve governance and service delivery, USAID assists national and local governments, local councils and civil society to improve incentives for better local government performance and adopt innovative service delivery approaches. USAID also supports local government efforts to increase access to safe drinking water and adequate sanitation.

Rule of Law. USAID assists the Supreme Court and Attorney General’s Office reforms in developing a more accountable and effective justice systems, as well as NGOs, think tanks and professional groups that monitor and advocate for justice sector reform. USAID also supports legal education through clinical education and policy-oriented legal research.

Political Representation. USAID works to improve the policymaking capability of legislative bodies, CSOs, universities and think tanks and strengthen connections between representative institutions (legislatures, civil society and political parties) and Indonesian citizens.

Elections. USAID conducted an elections assessment in February of 2012. It currently has programming in procurement to support Indonesia in the 2014 elections.

Peace and Democratic Culture. USAID has supported CSOs and government institutions in promoting and protecting citizens’ rights and promoting conflict-sensitive approaches to development, technical capacity building, livelihood development and civil society through the conflict mitigation program scheduled to end in February 2013. USAID is currently considering a new engagement in Papua to address the drivers of vulnerability and marginalization.

Sharing Indonesia’s DRG Experience. Through programs like the IKAT- U.S. program, USAID supports Indonesian civil society by fostering mutual collaboration on the democracy, good governance and human rights-related program. It thus recognizes both what Indonesia has to offer Southeast Asia as well as what the region can do to support such efforts in Indonesia.

ANNEX 3. OTHER USAID AND U.S. GOVERNMENT PROGRAMS

The U.S. Government in Indonesia has been particularly concerned with corruption and has pushed for increased anti-corruption programming. Rule of law, including law enforcement and anti-terrorism activities have also been a priority. The human rights agenda has been important to the Mission particularly in the area of Islamic radicalism and human rights abuses in Papua.

Other U.S. Government donors in the DRG sphere in Indonesia include the Millennium Challenge Corporation (MCC), State Department's Bureau of Democracy, Human Rights and Labor (DRL) and Bureau of International Narcotics and Law Enforcement Affairs (INL), Department of Justice (DOJ), and USAID.

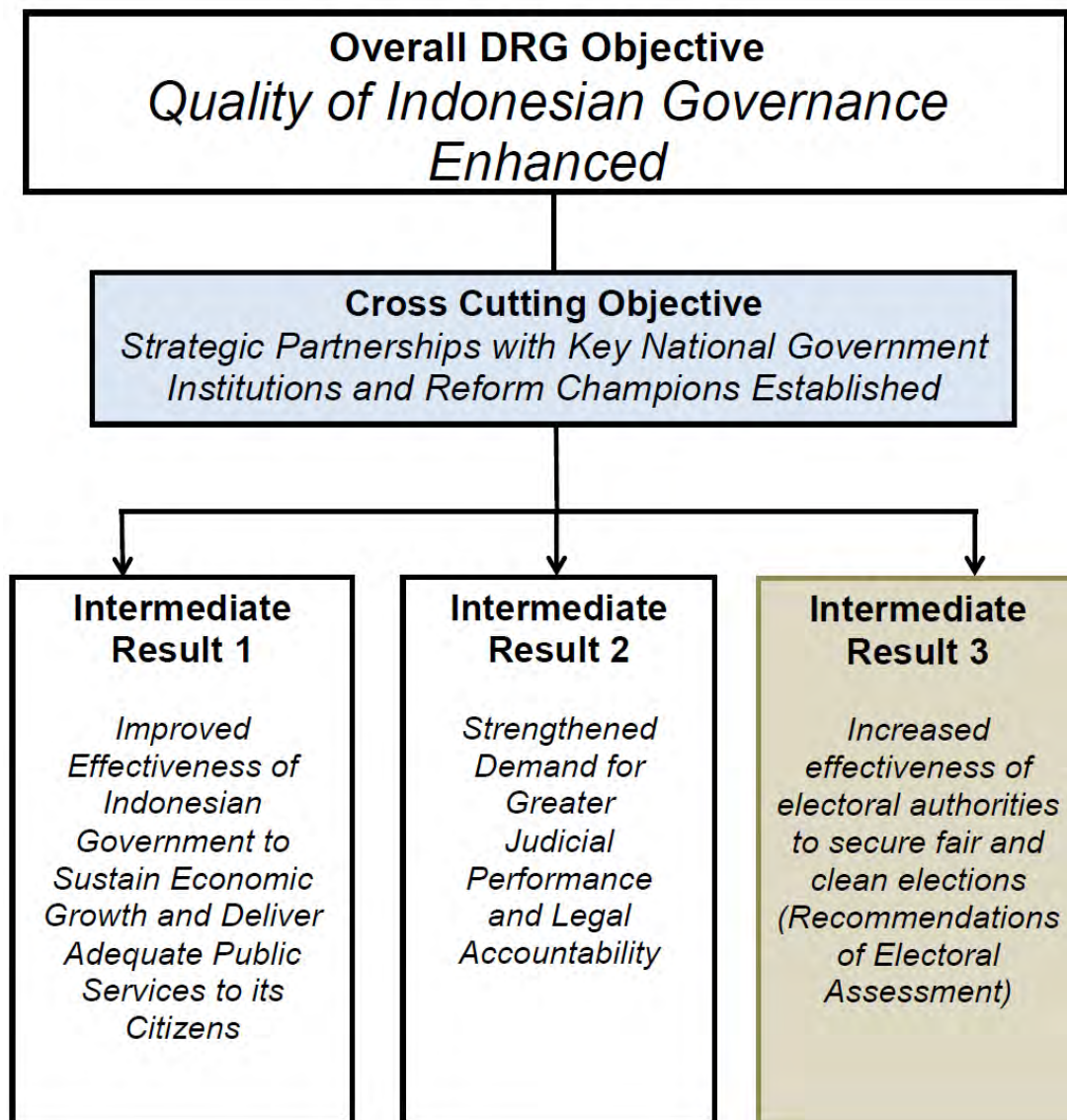
DRL. Over the past five years, DRL has invested in programs that support security service accountability, religious freedom, labor rights, and women's empowerment. DRL leverages a grassroots approach that encourages innovation, creativity, and responsiveness to on-the-ground issues. Most of the funds support international organizations that either maintain in-country office(s) or partner with local civil society actors. The grants are small-scale, and thematic foci evolve depending on areas of opportunity, as informed by DRL's *Indonesia Report on Human Rights Practices (HRR)* and *International Religious Freedom (IRF)* report.

INL and DOJ. INL and DOJ are supporting rule of law related to building prosecutorial capacity in Indonesia. Much of the efforts also support countering violent extremism and terrorism. Indonesian counterparts for the INL and DOJ work include police, corrections and justice sector officials, and select executive officials. INL was establishing a new office. The International Criminal Investigative Training Assistance Program (ICITAP) and Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) have staff in country. At the time of the assessment, the Embassy was planning to draft a rule of law strategy that would outline more details on U.S. Government work in the area.

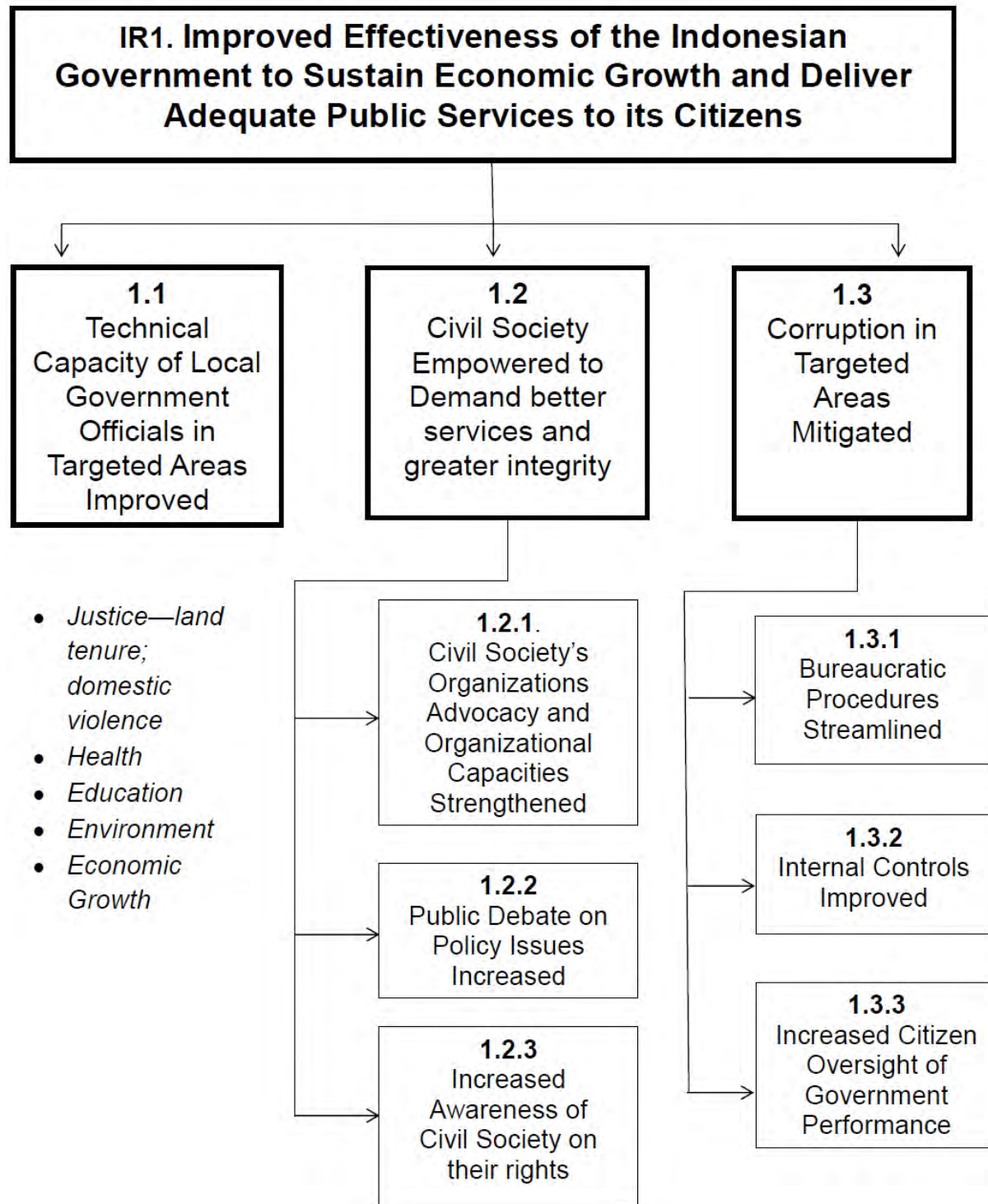
MCC. In September of 2011, MCC signed a five-year \$600 million compact. This compact includes a \$50 million Procurement Modernization Project which is designed to assist the Government of Indonesia in achieving significant government expenditure savings with no loss—or an increase—in the quality of procured goods and services. The project includes activities to build a career path for procurement civil servants, create an institutionalized role and structure for procurement professionals that provides sufficient authority to implement good practice, and strengthen controls such as procurement and financial audits to ensure improved institutional performance.

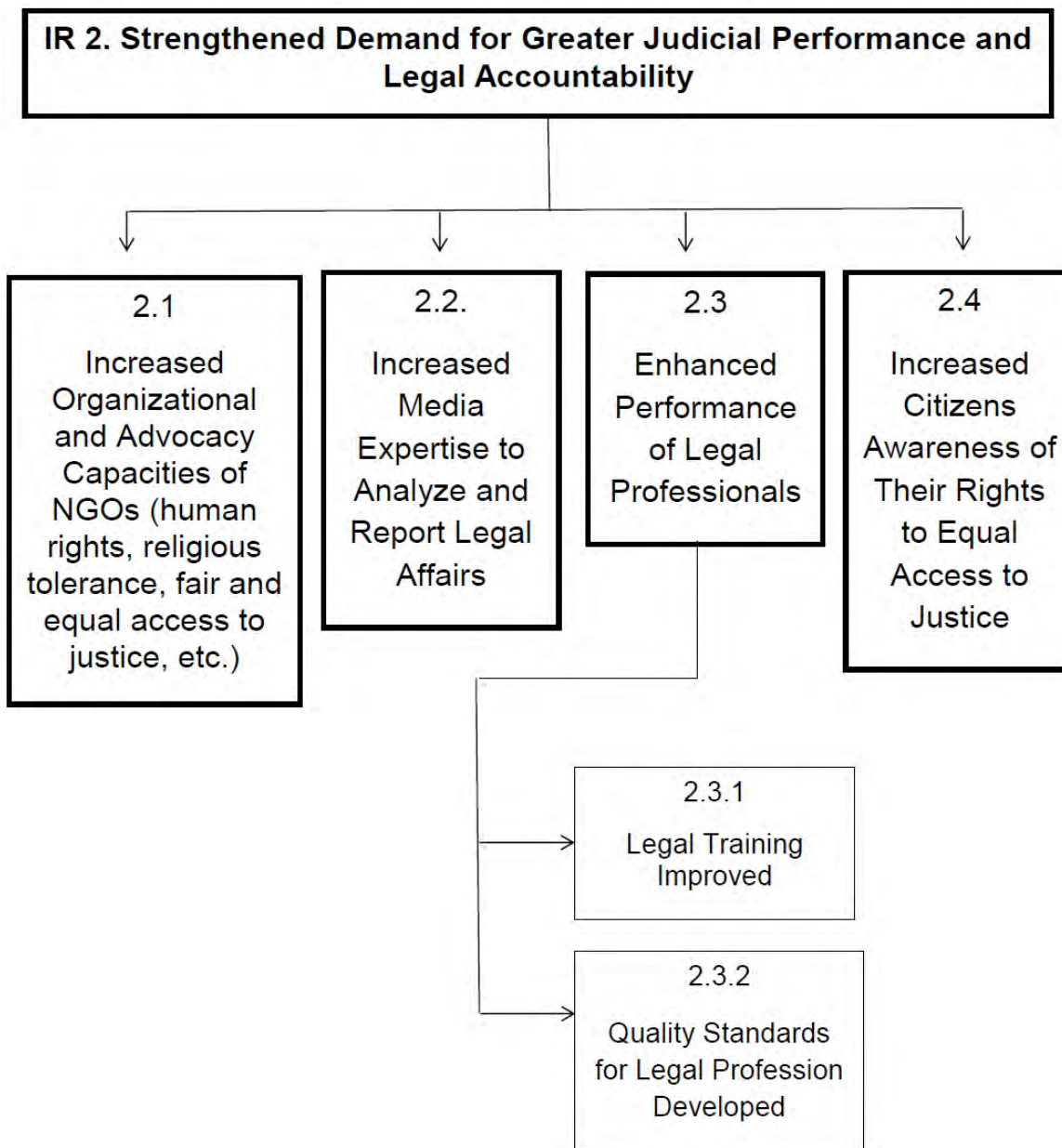
ANNEX 4. RESULTS FRAMEWORK

OBJECTIVES AND INTERMEDIATE RESULTS



INTERMEDIATE RESULTS AND SUB-RESULTS (PRIORITY SECTORS)





ANNEX 5. PEER REVIEW OF DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE ASSESSMENT OF INDONESIA

As part of the DRG Assessment process, USAID commissions an independent expert on the democratic transition in the subject country or region to undertake a peer review of the Final Report. The purpose of the peer review is to provide an external commentary on how well the DRG Assessment captures the essential political dynamics of the subject country and the soundness of its analysis and recommendations. The review offers an expert opinion on the overall quality of the report; it identifies any innovative findings that may have emerged in the up-to-date DRG Assessment; it points out any key gaps in the analysis as well as noting differences of political interpretation; it evaluates the extent to which the recommendations are logically derived from the analysis; and provides an occasion for the reviewer to comment on the overall appropriateness of USAID's DRG methodology for elaborating a DRG strategic approach that is rooted in a clear and compelling understanding of a country's political dynamic.

Review submitted by Michael Buehler, Assistant Professor of Political Science, Northern Illinois University, April 8, 2013.

INTRODUCTION

I have thoroughly read the report *Democracy, Human Rights, and Governance Assessment of Indonesia* and found that it provides a good account of the considerable progress Indonesia has made in past years. Prognoses popular in 1998 about the looming 'balkanization' of Indonesia and the persistence of authoritarian institutions were wrong. Instead, the fundamentals of Indonesia's democracy have been put in place and look stronger than anyone would have predicted 15 years ago. The regularly held elections are generally free and fair and various reform laws have established a formal framework for checks and balances between government branches. Indonesia has also made great strides in establishing a more inclusive political arena, as its vibrant civil society and media landscape show. Overall, Indonesia has become a "normal" democracy that faces challenges similar to other low-quality democracies.

I also found that the report identified accurately the key challenges Indonesia is facing with regard to democratization, human rights, and governance. The main questions Indonesia is facing at present are how to improve the quality of democracy, as well as how to strengthen the rule of law and implement the various reform initiatives that have been adopted since 1998.

There is also plenty to like about the authors' recommendation to concentrate on improving "effectiveness of the Indonesian government to sustain economic growth and deliver adequate public services to its citizens; strengthen demand for greater judicial performance and legal accountability; increase effectiveness of electoral

authorities to secure free and fair elections.”¹⁴¹ The recommendation to focus future aid efforts on subnational politics is also valid and useful.

However, I also found that the observations in the report are not particularly novel and therefore the recommendations for how to best support Indonesia’s democratization process not particularly original. In fact, the problems identified in the report, including lack of reform will, low civil society capacity and poor governance, as well as the remedies suggested are very similar to those outlined in the USAID democracy and governance assessment published in 2008.¹⁴² The overlap between the two assessments shows first and foremost how entrenched many of Indonesia’s key problems are. However, it also points to the failure of many development programs and needs assessments to problematize Indonesia’s many challenges in a way that would allow for recommendations conducive to change.

Rather than understanding the contours of democratization and state-society relations shaped by the *absolute* capacity of individuals or government branches and the absence/presence of ‘reform-oriented’ behavior as in the report under review here, an understanding of Indonesian politics based on a *relational* sense of capacity and power that emphasizes the primacy of *alliances, coalitions and networks* driving change or facilitating stagnation, may offer some new insights and therefore lead to additional/different recommendations for how to address Indonesia’s main challenges. In other words, I mainly agree with the report as to what Indonesia’s key problems are. I do not entirely agree with how the report depicts the causes of these problems and therefore the solution suggested.

The report identifies substandard service delivery along with a weak and deeply corrupt justice system as the most important governance challenges Indonesia is facing today. I will therefore concentrate on these two issues in my comments.

I. GOVERNANCE

To start out on a positive note, I believe it is testament to the considerable progress Indonesia has made since 1998 that the discussion about whether the *broad* structures of democracy are under threat has shifted to a more *specific* debate as to how the various reform initiatives adopted over the past 15 years can be implemented to improve government services and strengthen the rule of law.

Nevertheless, corruption in Indonesia remains systemic and therefore endemic. The report correctly points out that some progress has been made with regard to arresting corruptors and the important role the Corruption Eradication Commission has played in this development. It is important to emphasize, however, that many of the high-level bureaucrats convicted of corruption had their sentences reduced soon after being sent to jail. Furthermore, the amount of assets recovered is very low, and decisions about who is pursued for corruption and who is not continue to be mapped politically.¹⁴³ Well-connected military and police personnel as well as civil servants and judges usually go unpunished for corruption crimes committed. Most importantly, the emphasis of Indonesia’s anti-corruption drive on punitive measures is addressing symptoms rather than causes.

In this context, it is worth reiterating that positive incentive structures for bureaucrats remain completely absent 15 years after the collapse of the New Order regime. The hiring of new bureaucrats is not based on needs; bureaucrats continue to be underpaid while opaque salary structures that encourage abuse remain in place. Promotions continue to be based on seniority rather than performance. The authors are absolutely

¹⁴¹ USAID. (2013b). *Democracy, Human Rights and Governance Assessment of Indonesia: Final Report (Draft)*. Written by Mizrahi, Yemile, et al. Burlington: Tetra Tech. p. 48.

¹⁴² Bjoernlund, Eric, William Liddle and Blair King. *Indonesia-Democracy and Governance Assessment: Final Report*. Bethesda: Democracy International, 2008, pp. 45-59.

¹⁴³ “Sentence Reduction Moratorium Required: ICW,” *The Jakarta Post*, September 4, 2011, available at <http://www.thejakartapost.com/news/2011/09/04/sentence-reduction-moratorium-required-icw.html>.

correct that the demise of Suharto “did not effectively dismantle the structure of opportunities for engaging in corrupt behavior.”¹⁴⁴

However, it is worth emphasizing that many *new* reform laws that have been adopted since 1998 are also playing a role in Indonesia’s poor governance and service delivery. This is most visible, and most consequential, with regard to government expenditure at the subnational level. Transparency in central-local fiscal relations remains low, and the central government spends a considerable amount of national revenue in sectors that have officially been under the authority of subnational governments since 2001. Concretely, deconcentration funds (*dana dekonsentrasi*) and co-administered funds (*tugas pembantuan*) that are supposed to be used for national-level functions at the provincial and district levels, respectively, are mostly used for functions that have been devolved to the local level and therefore fall under subnational government authority. This practice is illegal according to decentralization laws but not necessarily according to sectoral laws.¹⁴⁵

In addition, legal inconsistencies have allowed local governments to draft their budgets in different ways. In the mid-2000s, for instance, some subnational governments used the guidelines outlined in Law No. 17/2003 on State Finances while others followed the regulations stipulated in the Ministry of Home Affairs Decree No. 29/2002 on Regional Financial Management to draft their budgets.

One of the main consequences of this contradictory legal environment and poor intergovernmental relations are unspent balances for public services at the local level. While spending varies at the subnational level,¹⁴⁶ unspent public funds have grown considerably across Indonesia since 2001.¹⁴⁷ Indonesian districts have the financial means that would allow them to spend US\$ 400 more per person per year than they currently do. This is a significant amount of money in a country in which 130 million citizens continue to live on less than U.S. \$2 a day. Almost all these reserves are amassed inadvertently and in an ad-hoc fashion due to problems in national-local fiscal relations, inflexible budget rules, and a lack of clear rules and guidelines on the responsibilities and duties of local bureaucrats. This situation, in combination with a more aggressive anti-corruption agenda, has increased the reluctance of local government officials to participate in tender committees.¹⁴⁸ Local governments are also spending fewer funds than they ought to because they often do not understand that it is their responsibility to disperse such funds. Very often, they continue to lobby national level officials to disperse funds at the local level, much like during the New Order era.¹⁴⁹

In short, the causes of Indonesia’s poor governance record cannot simply be reduced to the continuity of New Order institutions and the “bureaucratic mindset” fostered during the New Order years.¹⁵⁰ Many laws and regulations adopted *after* 1998 are poorly drafted and in direct contradiction to existing laws. This creates an environment that makes it difficult even for bureaucrats with the best intentions to deliver good services to the public. In addition, ambiguous relations between government layers rather than the absolute capacity of government branches are one of the main reasons behind the abysmal quality of public services in Indonesia.

¹⁴⁴ USAID, 2013b, p. vi.

¹⁴⁵ Lewis, Blane and Jasmin Chakeri. ‘Central development spending in the regions post-decentralisation,’ *Bulletin of Indonesian Economic Studies*, 2004, Vol. 40, No. 3, pp. 379-94.

¹⁴⁶ World Bank. *Indonesia Public Expenditure Review: Optimizing Sub-National Performance for Better Services and Faster Growth*. 2012, Jakarta: World Bank.

¹⁴⁷ Lewis, Blane and Andre Oosterman. ‘The impact of decentralization on subnational government fiscal slack in Indonesia,’ *Public Budgeting and Finance*, 2009, Vol. 29, No. 2, pp. 27-47.

¹⁴⁸ Lewis and Oosterman. 2009, p. 17.

¹⁴⁹ Lewis and Oosterman. 2009, p. 17.

¹⁵⁰ USAID, 2013b, p. vi.

2. RULE OF LAW

There have been great efforts since 1998 to replace the rule by law characteristic of the Suharto years with the rule of law. The constitution has been revised to reconstitute the independence of the three government branches and various oversight bodies such as the Ombudsman office or the Judicial Commission have been established to facilitate civil society monitoring of the institutional framework on which Indonesia's democracy rests.

Yet, the rule of law remains a central problem as the report points out correctly.¹⁵¹ It is worth emphasizing that this does not mean that laws are absent. Rather, the law is enforced arbitrarily. Ordinary Indonesians have a high chance of going to jail for misdemeanors while well-connected bureaucrats and politicians usually walk free for much more serious crimes.¹⁵² I agree with the authors' assessment that corruption within the judiciary remains rampant and that court rulings therefore demand little respect.

However, I differ in several respects compared to the authors' interpretation as to the origins of the problems in Indonesia's judiciary. Most importantly, I do not agree with the authors' claim that the main reason for stalled reforms in Indonesia's judiciary is a "lack of independence."¹⁵³ Many of the indicators that the authors muster to support their argument are misleading or outright wrong.

Due to confined space, I will concentrate on the two issues the authors see as the main problem. One, the authors state that "[p]erhaps the single most important flaw in Indonesia's current judicial system is that the institutional procedures designed to nominate judges to the Supreme Court continue to undermine judicial independence."¹⁵⁴ The authors are confusing system and implementation issues. A system may be fine, but implementation may be bad, tarnishing the system's reputation. As the system goes, and as a matter of principle, there hardly is a Supreme Court in the world or in any OECD countries, where the political institutions do not play a major role in determining its constitution. The reason is two-fold: first, political power wants to ensure that a (potentially) powerful agency such as the Supreme Court more or less reflects its own political priorities. Second, by running the appointments process through the political process, the court is invested with a democratic legitimacy that allows it to wield the powers it has—including striking down legislation, as the case may be. Consequently, whether in Germany, the United Kingdom or the United States, one finds that selection and appointment to the Supreme Court is done by the executive and parliament, with various constructs applying. Hence, the Indonesian system is absolutely normal. Where the Indonesia system differs somewhat from the United States, for instance, is that due to the judiciary's independence during the New Order, where Supreme Court Justices were selected by the President, and submitted to approval to the parliament (which is the U.S. procedure), after 1998 a system was adopted in which the parliament selects the Justice and submits the name for final signature to the President. This addresses the real issue that Suharto had a rubber-stamp parliament, and fits in the broader limitation of executive power. There is nothing extraordinary about the Indonesian procedure. This appointments process, with its peculiar nuances from country to country, is the prevailing system throughout OECD countries, and one cannot say that the Indonesian *system* generates lack of independence. For all the theoretical merits of this system, and the way it complies with international standards, it does not work well. The root problem lies in the Indonesian parliament, which has become a corrupt market for anything, including the selection of judges. The way the parliament submits candidates to a proper ordeal during the mandatory 'fit and proper test', which is not

¹⁵¹ USAID, 2013b, p. 6.

¹⁵² Winters, Jeffrey A. "Who Will Tame the Oligarchs? Not democracy but Rule of Law is Indonesia's Central Problem" No. 104 (Apr-June 2011), Available at <http://www.insideindonesia.org/edition-104-jul-sep-2011/who-will-tame-the-oligarchs-22041445>.

¹⁵³ USAID, 2013b, p. 7. Similar sentiments are expressed on p. 6 and p. 26.

¹⁵⁴ USAID, 2013b, p. 7.

marked by competence or respect of any sort, makes people of real quality and caliber step back since they refuse to lower themselves to that level.¹⁵⁵

Two, the authors claim that the Indonesian judiciary is also not independent because “financially, [the judiciary] is strictly regulated by the Ministry of Finance, so it does not have budgetary independence.”¹⁵⁶ This assessment, again, is simplistic, incorrect and misleading. Indonesia’s ‘one-roof system’ means that the judiciary manages its own budget once it has been allocated (in contrast to France or Germany, where the executive manages the budget after allocation). The argument of the authors is that as long as the budget allocation is in the hands of the Ministry of Finance (and therefore the executive branch of government), independence is not guaranteed. However, there are only very few countries, mainly in Latin America, where the percentage of the budget allocated to the judiciary is fixed in the constitution. These arrangements have been abject failures.¹⁵⁷ In addition, it is certainly correct that the allocation process remains an instrument through which the judiciary might conceivably be throttled. However, the way budgets are allocated to the judiciary in Indonesia is how the system works in most countries, including the United States. Arbitrary cuts for judicial budgets in the United States in recent years have brought the court system in Massachusetts, for instance, to the “tipping point of dysfunction” according to the state’s Chief Justice, while his colleague in California stated that “the civil court system is collapsing” with “3200 court houses...physically eroding, which forced half of the state courts to stop hearing cases at one point.”¹⁵⁸

In short, the judicial *system* in Indonesia is not any weaker, neither conceptually or operationally, than the court system in the USA, or any other OECD country, and does not somehow fall short on securing judicial independence. It is also worth reiterating that no player in Indonesian politics questions the independence of the judiciary, which is constitutionally enshrined and has been reiterated in a slew of statutes over the years.

It is an entirely separate question whether judges are independent in reality. I felt that the report tends to portray judges as victims, while the situation on the ground is arguably more complex. Many judges are indeed at the receiving end of influence peddling and pressure exerted by major political and economic players. However, many judges voluntarily let themselves being recruited into patronage networks already during law school. In these networks, judges can then become very powerful players. Currently, “[t]here are at least three large competing networks in the [Indonesian] judiciary...with a nationwide spread, involving huge sums of money and assets, land, hotels and helicopters, tied in with both local and national politics and large entrepreneurs, able to mobilize senior power brokers, from parliament to the media...”¹⁵⁹ Against this backdrop, the authors’ notion that Indonesian judges are not independent or are somewhat ‘second-rate’ players because they are law graduates from the country’s “worst law schools”¹⁶⁰ and therefore lack the skills and talent, is naïve.

¹⁵⁵ Email conversation with Sebastian Pompe, April 6, 2013.

¹⁵⁶ USAID, 2013b, p. 26.

¹⁵⁷ Buscaglia, Edgardo, and Thomas Ulen. “A quantitative assessment of the efficiency of the judicial sector in Latin America.” *International Review of Law and Economics* 17, no. 2 (1997): 275-91; Hammergren, Linn A. *Envisioning reform: improving judicial performance in Latin America*. Penn State University Press, 2007.

¹⁵⁸ Gershman, Jacob. “U.S. Asks Supreme Court To Look at Judicial Pay Dispute,” *The Wall Street Journal*, 14 January 2013. Available at <http://blogs.wsj.com/law/2013/01/14/u-s-asks-supreme-court-to-look-at-judicial-pay-dispute/>; Liptak, Adam. “Chief Justice Prods Congress to Resolve Budget Talks and Control National Debt,” *The New York Times*, 31 December 2012. Available at http://www.nytimes.com/2013/01/01/us/chief-justice-roberts-prods-congress-on-fiscal-matters.html?_r=1&

¹⁵⁹ Email conversation with Sebastian Pompe, April 3, 2013.

¹⁶⁰ USAID, 2013b, p. 7.

3. RECOMMENDATIONS

I agree with the authors that future USAID projects should focus on the subnational level. Not only have most political and fiscal powers been shifted away from national politics since 1999 but the impetus for change in past years has been most pronounced in local politics.

I am less convinced by the assumptions underlying the authors' other recommendations. The report attributes Indonesia's poor governance record and stalled judicial reforms to "weak leadership"¹⁶¹ and a "lack of political will"¹⁶² to address Indonesia's most pressing problems. Reform failure, in other words, occurs at the *individual* level. Since individual agency is key, the authors conclude that support for "reform champions" who "exist in virtually every government agency at the central and local levels"¹⁶³ have been the main "drivers of change" in past years.¹⁶⁴

I find such a view not very helpful for several reasons: One, many of Indonesia's problems are rooted in the complexities of networks among bureaucrats and relations between government institutions, some of which I tried to sketch briefly above (e.g. financial relations between government layers; patronage networks within the judiciary; a lack of oversight between government branches). Two, there is neither a serious discussion nor a consensus in the scholarship on Indonesia as to what constitutes a "reform champion." Not only does a "reformer" as defined by donor agencies not resonate with many Indonesians (which partly explains both the puzzle mentioned in the report that many Indonesians are quite content with their leaders, as well as the reason they frequently vote politicians convicted for corruption back into office), but also there are no criteria among donors either that would be needed to identify such "reform champions." The difficulties of locating "reformers" is aptly shown by the fact that the USAID 2008 assessment described the Yudhoyono leadership as "stronger than any of its democratic predecessors...more committed to improving public services and tackling corruption."¹⁶⁵ Only a few years later, the USAID 2013 assessment under review here states that "Yudhoyono...has a reputation for inaction" and "the president himself seems to be at fault for weak leadership."¹⁶⁶ Many other politicians singled out as "reform champions" and "drivers of change" in recent years by donor agencies have also been leading figures behind the adoption of policies detrimental to the deepening of democratization and the rule of law. For instance, Gamawan Fauzi, who was appointed as Indonesia's Minister of Home Affairs in 2009 not least because of his reputation as a "reform champion," was also one of Indonesia's leading local government heads in adopting shari'a regulations that restricted the democratic rights of women and minorities and were in direct violation of Indonesian law. In short, the complexities of politics in Indonesia (as anywhere else) make it difficult to establish criteria that allow aid agencies to single out "reform champions" and design development programs around them.

To interpret Indonesia's many achievements since the demise of Suharto as the result of individual agency, in my view, not only simplifies the country's reform trajectory over the past 15 years but also does not resonate with the experience of other countries. Throughout history, *changing relations* among political elites have usually initiated civil service reform as countries as diverse as Italy, the Philippines, the United Kingdom, the United States or Vietnam show.¹⁶⁷

¹⁶¹ USAID, 2013b, pp. v, 3, 18-9.

¹⁶² USAID, 2013b, p. 34.

¹⁶³ USAID, 2013b, p. 40.

¹⁶⁴ USAID, 2013b, p. 18.

¹⁶⁵ Bjoernlund, et al., 2008, p. 45.

¹⁶⁶ USAID, 2013b, p. 9.

¹⁶⁷ Berman, David R. 2000. *State and Local Politics*. 9th ed., New York: M.E. Sharpe. p. 258; Boudreau, Vincent. "Elections, repression and authoritarian survival in posttransition Indonesia and the Philippines", *Pacific Review*, 2009. Vol. 22, No. 2, p. 237; Gainsborough, Martin. 2002. "Political change in Vietnam: In search of the middle-class challenge to the state," *Asian Survey*, Vol. 42, No. 5, p. 705; Harris, Robert.

At the national level, such inter-elite competition has fluctuated greatly over the last decade, being most intense in the immediate aftermath of Suharto's demise. During this time, fundamental reforms were adopted, including far-reaching electoral and constitutional changes and the devolution of political power to regional governments.¹⁶⁸ This competition subsided after 2004. At the local level, the trend has been in the opposition direction. Various reform laws have steadily increased the competition among subnational political elites, culminating in the adoption of direct elections for governors, district heads and mayors in 2005.

This intense competition among local elites in the context of local elections has increased local spending on service delivery.¹⁶⁹ In addition, elite competition has opened up interstices for civil society organizations. While civil society representatives have failed to enter formal politics overall—most politicians winning local legislative and executive elections are rooted in the New Order bureaucracy—competition among these state elites has *subsequently* allowed civil society organizations to *influence* politics. The report mentions several examples of how civil society organizations managed to hold local governments accountable that became possible *precisely* as a result of more competitive elite relations.¹⁷⁰

In short, it is not so much the presence or absence of “reform champions” that has led to change across the archipelago and government layers but the fact that now competition exists among elites. By competing against each other, New Order elites have pushed state-society relations in more democratic directions—in spite of themselves.¹⁷¹

Based on the assumption that it is the changing relations among elites rather than the potency of individual agency such as the personal character traits or the behavior of individual politicians that have been driving reform by opening up interstices for change across Indonesia after 1998, a somewhat different set of recommendations follows than the ones suggested in the report under review here.

First, the framework that assures competition among political elites needs to be protected and strengthened. I agree with the report that development initiatives have the greatest impact at the local level. Coincidentally, it is also at the local level where the framework for competition among elites is most threatened. At the time of writing, a concerted effort led by the Ministry of Home Affairs was under way to abolish direct elections for governors. The national parliament is unlikely to pass the draft law in its current form but the executive has already drafted a new law that also wants to abolish the direct elections for district heads and mayors. Rather than supporting “reform champions” who are hard to identify for reasons listed above, USAID ought to ensure through its programs that the framework for competition remains in place and is strengthened. This necessitates broadly targeted programs rather than a focus on individual players.

Second, USAID efforts should focus on improving the relations between government layers. Most importantly, programs should aim at improving the stringency of existing Public Financial Management (PFM) systems. At the moment, “[f]ormal processes...mask the real processes through which resources are raised, distributed, and spent.”¹⁷² This is particularly evident in national-local fiscal transfers as mentioned

Political Corruption: In and Beyond the Nation State. London: Routledge, 2003. p. 213; Schneider, Jane C. and Peter T. Schneider. *Reversible Destiny: Mafia, Antimafia, and the Struggle for Palermo*. Berkeley: University of California Press, 2003..

¹⁶⁸ Buehler, Michael. “Indonesia’s Law on Public Services No. 25/2009: Changing State-Society Relations or Continuing Politics as Usual?” *Bulletin of Indonesian Economic Studies*, Vol. 47, No. 1, 2011. 65-86.

¹⁶⁹ Skoufias, Emmanuel, Ambar Narayan, Basab Dasgupta, and Kai Kaiser. “Electoral accountability, fiscal decentralization and service delivery in Indonesia.” *World Bank Policy Research Working Paper Series*, No. 5614, 2011. Jakarta: The World Bank.

¹⁷⁰ USAID, 2013b, p. 37.

¹⁷¹ As USAID’s Strategic Assessment Framework correctly notes: “Actors need not support democracy, human rights, or good governance per se to be useful allies for reform. They need only *benefit* from and, therefore, support certain reforms which in turn advantages democracy. It is enough that there is a commonality of interests.” USAID, 2011, p. 9.

¹⁷² Porter Doug, Matt Andrews, Joel Turkewitz and Clay Wescott. 2010. ‘Managing Public Finance and Procurement in Fragile and Conflicted Settings,’ *World Development Report 2011: Background Paper*, Washington D.C.: World Bank.

above. Future support should therefore focus on improving budget formulation and execution, the procurement of public goods as well as a framework to strengthen audit mechanisms.

Third, I believe that civil society capacity building has a lower priority. Ninety percent of Indonesia's civil society organizations are, to some degree, foreign funded. Competition for donor support has greatly undermined the capacity of such organizations to mount a concerted and coordinated challenge to the government. Ironically, conservative pressure groups and Islamist movements that are *not* receiving funds from donor agencies are some of the best organized and therefore most influential non-state actors in demanding services from the government, as the plethora of shari'a local regulations adopted across the archipelago in recent years shows.¹⁷³ Support for civil society organizations has also a lower priority because change of recent years has followed a certain *sequence*. Most civil society organizations have become influential only after competition among political elites increased. Ensuring elite competition is therefore paramount.

¹⁷³ Buehler, Michael. 2013. "Subnational Islamization through Secular Parties: Comparing Shari'a Politics in Two Indonesian Provinces," *Comparative Politics* (forthcoming October).

U.S. Agency for International Development

1300 Pennsylvania Avenue, NW

Washington, DC 20523

Tel: (202) 712-0000

Fax: (202) 216-3524

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